Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-421

JOHN M. BRYANT, *et al.*,
Petitioners,

—v.—

BEN YELLEN, *et al.*,
Respondents.

No. 79-425

STATE OF CALIFORNIA
Petitioner,

—v.—

BEN YELLEN, *et al.*,
Respondents.

No. 79-435

IMPERIAL IRRIGATION DISTRICT,
Petitioner,

—v.—

BEN YELLEN, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 14, 1979
CERTIORARI GRANTED DECEMBER 3, 1979

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THE SECRETARY OF THE INTERIOR
Washington

February 24, 1933

Imperial Irrigation District,
El Centro, California

Gentlemen:

Information at hand indicates that in connection with the contract with your district signed by me on behalf of the United States under date of December 1, 1932, some question has been raised concerning the maximum area of land in single ownership that may be irrigated from the proposed All-American Canal. My attention has been specifically called to the suit now pending in the Superior Court of Imperial County, California entitled Charles Malan *v.* Imperial Irrigation District et al. Among other things the complaint in this case contains the following allegation:

> "And it is further provided by the reclamation law of the United States that water shall not be delivered from any canal so constructed by the Secretary of the Interior under the said reclamation law to any landowner owning more than 160 acres of land."

The foregoing is an inaccurate statement of the reclamation law in this respect. Presumably this allegation is intended to refer to section 5 of the reclamation act of June 17, 1902, which reads in part as follows:

> "No right to the use of water for land in private ownership shall be *sold* for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made." (Emphasis supplied).

It will be recalled that while the reclamation law provides that no water shall be *sold* for a tract of land in excess of 160 acres in single ownership, it does not provide, as alleged,

that no water shall be delivered from a canal constructed by the Government to any tract exceeding 160 acres in area.

The All-American Canal contract with the Imperial Irrigation District does not provide for the sale of storage water for use in the Imperial and Coachella Valleys. The contract, in article 17, provides merely for the delivery of water for use in these valleys through the works to be constructed by the United States. No charge whatever is made for the water so to be delivered, and under the provisions of the Boulder Canyon Project Act no such charge can legally be made. From section 1 of this act for convenient reference the following is quoted:

> *"Provided, however,* that no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys."

Early in the negotiations connected with the All-American Canal contract the question was raised regarding whether and to what extent the 160-acre limitation is applicable to lands to be irrigated from this canal. Upon careful consideration the view was reached that this limitation does not apply to lands now cultivated and having a present water right. These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned. Congress evidently recognized that these lands had a vested right when the provision was inserted that no charge shall be made for the storage, use, or delivery of water to be furnished these areas.

In connection with the activities of the Bureau of Reclamation it has been held that the provisions of section 5 of the reclamation act restricting the sale of a right to use water for land in private ownership to not more than 160 acres will not prevent the recognition of a vested water right for a larger area, and protection of the same by allowing the continued flowage of the water covered by the right through the works constructed by the Government. (Opinion of Assistant Attorney General, 34 L. D. 351; Anna M. Wright, 40 L. D. 116). On many projects it has been

the practice to recognize vested rights in single ownership in excess of 160 acres and to deliver the water necessary to satisfy such rights through works constructed by and at the expense of the Government. This is true of the Newlands project, the North Platte project, the Umatilla project, and others.

The provision quoted from section 5 of the reclamation act relates to land in private ownership. This of course would not apply to the tributary public lands to be included within the boundaries of the district. While this particular provision would not be applicable to the public lands, they would be governed by section 4 of the reclamation act and other provisions which limit the area of public lands that may be entered to a farm unit required for the support of a family. This area will be such as may be fixed by the Secretary, consisting of not less than 10 nor more than 160 acres. (Section 9 of the Boulder Canyon Act and Act of June 27, 1906, 34 Stat. 519).

The foregoing has been long settled by decisions of the Department and by the practice in carrying such decisions into effect.

Sincerely yours,

/s/ RAY LYMAN WILBUR
Secretary.

March 1, 1933

Richard J. Coffey, Esquire,
608 Grant Building
Los Angeles, California

Dear Mr. Coffey:

In your telegram of February 28 from Phoenix relating to the All-American Canal contract you requested that Mr. Childers be furnished with a certified copy of the Department's ruling on the 160-acre limitation. When your telegram was sent you no doubt assumed that this ruling would take the form of a formal decision. This, however, is not the case. It was decided that the matter should be passed upon in a letter addressed by the Secretary to the Imperial Irrigation District. This letter was dated February 24 and I understand the original has been forwarded by Messrs. Du Bois and Dowd to Mr. Childers. If the letter is to be used in the case under the well-known rule a certified copy could not be used until satisfactory explanation is made of failure to produce the original. A certified copy, therefore, presumably, would serve no useful purpose and accordingly is not being furnished.

Messrs. Du Bois and Dowd were in the office this morning and exhibited a telegram received by them from Mr. Childers, who in his telegram indicated that the situation is not fully met in that the discussion relates to the 160-acre limitation in the reclamation act, whereas they are apprehensive concerning the act of May 25, 1926, presumably Section 46. You will recall that this is a matter which was very extensively discussed. You and I were of the opinion that some specific provision should be inserted regarding this acreage limitation and the original draft of contract so provided. However, representatives of the district entertained the fear that should a specific provision be inserted in the contract it would only be confusing and make the ratification by the landowners more difficult. In my view the acre principle discussed in the Secretary's letter of February 24, based upon section 5 of the reclamation act,

involves precisely that contained in section 46 of the act of May 25, 1926. The latter act merely ties up with and emphasizes what has always been the law in this respect.

The Secretary's letter was directed to the specific allegations in the complaint, which, so far as could be ascertained, had no direct reference to the act of May 25, 1926. I assume, however, that regardless of the allegations in the complaint, Mr. Childers is apprehensive that argument may be submitted based upon the 1926 act. If this is done it seems to me the defense would necessarily be based upon the propositions, first, that the All-American Canal work constitutes a special project specifically authorized by the Boulder Canyon Project Act and that this stands upon a basis quite different from the ordinary conception of a project. The second proposition is that the acreage limitation in the reclamation law (including section 46 of the act of May 25, 1926) does not apply to the lands having a vested right. This is the ground upon which you and I with reluctance agreed to elimination of the specific provision regarding acreage limitation.

Section 14 of the Boulder Canyon Project Act provides that it shall be deemed a supplement to the reclamation law, which shall govern the construction, operation and maintenance of the works authorized except as otherwise provided in that act. The specific provisions of the Boulder Canyon Project Act are therefore controlling. Section 4(b) of this act provides that contracts for repayment of costs shall be made before any money is appropriated or construction started. Section 46 of the act of May 25, 1926 contains an entirely different provision in this respect. This section does not require a contract in advance of appropriation of money or construction but does require a contract of the character described before water is delivered. Section 46 is of general application and of course contemplates a case where a project is being constructed from which a new and complete water right will be sold and where a distribution system is constructed and water deliveries made through it. The special conditions in the Imperial and Coachella Valleys were known to Congress, and I believe some consideration was given to incorporating a special provision

regarding the acreage limitation, though my memory in this respect is not entirely clear. Mr. Childers probably may recall what was contemplated and the reasons for no specific provision being inserted in this respect.

I hope the outcome of litigation will be satisfactory.

Sincerely yours,

/s/ Porter W. Dent
Assistant Commissioner.

M-36675 *December 31, 1964*

To: Secretary of the Interior

Subject: Excess Land Laws: Imperial Irrigation District

On August 7, 1961, the Chairman of the Senate Committee on Interior and Insular Affairs reported that complaints had been made that the excess land laws were not being enforced by the Bureau of Reclamation in Imperial and Coachella Valleys in California. He requested advice as to whether the excess land laws applied there, and if so what the status of land ownership was.[1]

You replied on May 15, 1962, stating that lands in Coachella Valley County Water District are subject to, and in compliance with, the excess land laws. You indicated, however, that while Secretary Wilbur in 1933 had ruled that the excess land laws do not apply to Imperial Irrigation District, there is some reason to suggest he may have been mistaken. You expressed the hope that time and staff would permit a study of this matter in the future.[2]

This question arose again at the Senate hearings on S. 1658 last April when Senator Kuchel of California asked if the excess land laws apply under the Boulder Canyon Project Act. The Senator stated that the question was, in his view, an important one.[3]

You have therefore asked me as Solicitor to make a careful study of the problem and advise you. After consideration of all issues I have concluded that, as a matter of law, the excess land laws do apply to lands in the Imperial Irrigation District.

The Imperial Irrigation District embraces about 530,000 irrigable acres of desert land in Southern California.

1. Letter from Senator Clinton P. Anderson to Secretary Udall, August 7, 1961. See Appendix L.

2. Letter from Secretary Stewart L. Udall to Senator Anderson, May 15, 1962. See Appendix M.

3. *Hearings on S. 1658 Before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs,* 88th Cong., 1st Sess., pt. 2, at 349-351 (1964).

Approximately 430,000 acres are now irrigated by Colorado River water which is stored at Hoover Dam and diverted at Imperial Dam to the All-American Canal for distribution within the District. The Hoover and Imperial Dams and the All-American Canal are federal projects authorized by the Boulder Canyon Project Act (the act of December 21, 1928, 45 Stat. 1057, 43 U.S.C. secs. 617-617t).

The federal government did not construct and does not own the system of canals and laterals through which water is distributed to individual farms after its discharge from the All-American Canal.

If the land limitation provisions of the reclamation law (herein sometimes referred to as the excess land laws) apply to privately owned lands in the Imperial Irrigation District, it is by virtue of terms of the Boulder Canyon Project Act.

Section 9 of the Project Act expressly applies the 160 acre limitation to public lands in the project. Hence, we are only concerned here with privately owned lands. Since Secretary Wilbur's ruling was limited to lands then irrigated from the Colorado River, this opinion considers lands to which an antecedent water right was assumed to be appurtenant. Thus, the question considered here is: Are privately owned lands in the Imperial Irrigation District, assuming they have appurtenant water rights, subject to the excess land laws?

Boulder Canyon Project Act

Section 1 of the Act states the purposes of the project, and authorizes the construction of a storage dam on the Colorado River and of a diversion dam and main canal to divert water to the Imperial and Coachella Valleys in California. While Section 1 provides that "no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys * * *," it also requires that the "expenditures for * * * [the] main canal and appurtenant structures [are] to be reimbursable, as provided in the reclamation law * * *." Since Congress does not purposely enact contradictory provisions in the same act, we must conclude that reimbursement for the main canal and appurtenant structures was not regarded by Congress as a charge for water or for its use, storage or delivery.

Section 4(b) of the Act outlines the terms under which the United States will be repaid for its investment. With respect to the "* * * main canal and appurtenant structures to connect * * * with the Imperial and Coachella Valleys in California * * *," the Secretary is instructed to "make provision for revenues, by contract or otherwise, adequate in his judgment to insure payment of all expenses of construction, operation, and maintenance * * * in the manner provided in the reclamation law."

Finally, section 14 of the Project Act reads as follows:

> This Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided.

Section 1 provides that the expenditures for the construction of the main canal and appurtenant structures are to be reimbursable "as provided in the reclamation law." Section 4(b) requires that the United States be repaid its expenses for construction, operation, and maintenance "in the manner provided in the reclamation law."

The Act defines, "reclamation law" in section 12 as "that certain Act of the Congress of the United States approved June 17, 1902 * * * and the Acts amendatory thereof and supplemental thereto."

On December 21, 1928, the date of the Project Act, and on June 25, 1929, the date when it became effective, the law prescribing the manner by which repayment was to be made for reclamation projects was section 46 of the Omnibus Adjustment Act of 1926 (act of May 25, 1926, 44 Stat. 649-50, 43 U.S.C. sec. 423e). Section 46 provides that no water is to be delivered[4] upon completion of "any new project"

4. The Project Act in Sec. 4(b) modifies this to provide that "[b]efore any money is appropriated * * * " the Secretary must make adequate provision for repayment.

until repayment contracts have been entered into with irrigation districts organized under State law. Section 46 further requires that:

> * * * Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior * * *.

The conclusion is inescapable, therefore, that the law, on December 21, 1928, required that the excess land laws apply to the Imperial Irrigation District.

This conclusion is reinforced by section 14 which provides that reclamation law "except as otherwise herein provided" shall govern "the construction, operation, and management" of the project works.

The provisions of reclamation law of general application dealing with land limitations include section 5 of the 1902 Act,[5] Sections 1 and 2 of the Warren Act,[6] Section 3 of the 1912 Act,[7] Section 12 of the 1914 Act,[8] and Section 46 of the 1926 Act, *supra*.

Section 5 of the 1902 Act forbids the sale of a water right for lands in private ownership for more than 160 acres. The "sale" can only be understood in the context of sections 4 and 5 of the Act. A reading of the two sections together

5. Act of June 17, 1902, 32 Stat. 388, 389, 43 U.S.C. § 431.

6. Act of February 21, 1911, 36 Stat. 925-26, 43 U.S.C. § 523-24.

7. Act of August 9, 1912, 37 Stat. 265, 266, 43 U.S.C. § 544.

8. Act of August 13, 1914, 38 Stat. 686, 689, 43 U.S.C. § 418.

reveals that the sale is not merely a commercial transaction involving the transfer of a water right. It is the contract by which the government secures repayment and the water user obtains the range of benefits resulting from the construction of the federal project.

In section 4 the Secretary is directed to estimate and announce the per-acre charge and the number of annual installments. This is his estimate of the consideration to be paid by the water user for the sale referred to in section 5. When section 5 states "no right to the use of water for land in private ownership shall be *sold*" for more than 160 acres, it obviously means that the use of project facilities shall not be made available to a single owner for service to more than 160 acres.

The owner of private land may also own a water right. Clearly a water right will not be sold, in the conventional sense, to such an owner.

Sections 4 and 5 disclose a scheme by which all participants in a project share its cost. If a private landowner cannot be sold a water right because he already owns one, he cannot be charged for it either and, since section 5 contains all the provisions of the Act for repayment, there is no way by which he can participate in the project.

Nothing in the 1902 Act or its legislative history suggests that private landowners with water rights could participate in a project, pay their share of its cost, but be exempt from acreage limitation.

In 1911, in the Warren Act, *supra*, Congress dealt directly with the situation where federal facilities may store or carry water owned by others. The use of federal facilities under the Warren Act is expressly conditioned on compliance with the excess land laws.

Section 3 of the 1912 Act provides that water shall not be "furnished under said [reclamation] act nor a water right sold or recognized for such excess" over 160 acres. Here is manifested in the clearest manner possible that the ownership of a water right prior to the construction of a

federal reclamation project would not entitle its owner to service from the federal land project for more than 160 acres.

The 1914 Act, *supra,* extended the time for repayment under the 1902 Act and made other changes in the reclamation law. Repayment by private landowners was effected as before, by the making of a water right application and the "sale" (in the sec. 5 sense) of a water right.

However, Section 12 of the 1914 Act provided that any owner of lands in excess of what should be determined to be sufficient to support a family could not be included in the project unless he agreed to sell his excess lands. Thus, as applied to the lands under the All-American Canal, the 1914 Act would require the landowners to agree to sell excess lands or not get any water through the Canal at all. When stated this way no distinction is possible between a landowner with and a landowner without a water right. Neither could get in the project without making the prescribed agreement.

The Act of May 15, 1922 (42 Stat. 541, 43 U.S.C. sec. 511), authorized joint liability contracts with districts in lieu of individual water-right applications. Section 46 of the Act of May 25, 1926, *supra,* made joint liability contracts mandatory for new projects. Such was the contract entered into with Imperial Irrigation District.

By Section 46 the mechanism of repayment by "selling" water rights to private landowners disappeared and was replaced by an undertaking by the district to repay construction charges.

The Project Act differed from section 46, which required a repayment contract before water was delivered to the district, by requiring, in section 4(b), the contract "before any money is appropriated." That this was the only change intended, and that section 46 was otherwise applicable, is clear from the section 4(b) requirement that repayment is to be effected "in the manner provided by the reclamation law."

"The manner provided by the reclamation law" on the effective date of the Project Act was section 46 of the 1926

Act. As already pointed out, section 46 required the application of the excess land laws in all cases where repayment contracts, such as the Imperial Irrigation District contract, were to be made.

In *Ivanhoe Irrigation District* v. *McCracken,* 357 U.S. 275 (1958), the Court considered the validity of contracts of the United States with irrigation districts made pursuant to the act authorizing the Central Valley Project (Act of August 26, 1937, 50 Stat. 850, as amended by the Act of October 17, 1940, 54 Stat. 1199). The contracts were challenged as invalid because they contained acreage limitation provisions. The Court held the contracts to be valid and authorized by Congress. The only provisions in the authorizing legislation which invoke the reclamation law are the third proviso of Section 2 of the 1937 Act, which provides, in part, as follows:

> * * * except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project * * *.

and section 2 of the 1940 Act, which adds authority to construct distribution systems "under the provisions of the Federal reclamation laws." The language in each instance is substantially the same as the language of the Boulder Canyon Project Act.

The Supreme Court in *Ivanhoe* declare that "* * * the authority to impose the conditions of the contracts here comes from the power of Congress to condition the use of federal funds, works, and projects on compliance with reasonable requirements [i.e. compliance with the excess land laws] * * *. [I]f the enforcement of those conditions impairs any compensable property rights, then recourse for just compensation is open in the courts." *Ibid.* at 291. In describing the effect of the excess land laws the Court said, "* * * the excess acreage provision acts as a ceiling, imposed equally upon all participants, on the federal subsidy that is being bestowed." *Ibid.* at 297.

Legislative History

The plain terms of the Project Act dictate that the excess land laws apply to lands served by the All-American Canal, Imperial Dam and appurtenant structures. After a thorough examination of the history of the Project Act itself and of legislative consideration of the bills which preceded it,[9] I have found no inference of congressional intent to exempt said lands from the excess land laws. As pointed out in *Ivanhoe,* "* * * where a particular project has been exempted because of its peculiar circumstances, the Congress has always made such exemption by express enactment." *Supra* at 292.

The Boulder Canyon Project Act was the enactment of the last of a series of Swing-Johnson bills. The fourth, and final, Swing-Johnson bill was introduced in the House as H.R. 5773 on December 5, 1927, and in the Senate as S. 728 on the following day.[10]

Unlike its predecessors,[11] the House version of the bill contained an express acreage limitation proviso covering private lands. The proviso was substantially identical with the excess land provision of section 46, Omnibus Adjustment Act of 1926.[12]

9. H.R. 6044, 66th Cong., 1st Sess. (1919); H.R. 11553, 66th Cong., 2d Sess. (1920); H.R. 11449, 67th Cong., 2d Sess. (1922); H.R. 2903 and S. 727, 68th Cong., 1st Sess. (1924); H.R. 6251, S. 1868, H.R. 9826, and S. 3331, 69th Cong., 1st Sess. (1926); H.R. 5773 and S.728, 70th Cong., 1st Sess. (1927).

10. 70th Cong., 1st Sess.

11. H.R. 11449, 67th Cong., 2d Sess. (1922); H.R. 2903 and S. 727, 68th Cong., 1st Sess. (1924); H.R. 6521, S. 1868, H.R. 9826, and S. 3331, 69th Cong., 1st Sess. (1926).

12. On February 5, 1926, Elwood Mead, Commissioner of Reclamation, testified during the hearings on H.R. 6251 and H.R. 9826 (third Swing-Johnson bill) before the House Committee on Irrigation and Reclamation that "old land," i.e., land already irrigated, "would be sold water under a Warren [Act] contract" and that the owners thereof would be allowed to occupy their then existing farm units, irrespective of the acreage involved. On the same occasion Congressman Swing affirmed that nothing in the third Swing-Johnson bill required owners of land in excess of 160 acres to sell that excess at a price set by the Secretary. *Hearings on H.R. 6251 and H.R. 9826 Before the House Committee on Irrigation and Reclamation,* 69th Cong., 1st Sess., pt. 1, at 32-33 (1926). These statements were made prior to the enactment of section 46 of the Act of May 25, 1926, and hence are not relevant to the Interpretation of the Project Act finally enacted. Moreover, Dr. Mead's statement was based on an erroneous understanding of the then existing reclamation law. The All-American Canal project was not a project of the character considered in the Warren Act of 1911 (36 Stat. 925). Had it been, the terms of that Act would have precluded the delivery of water to more than 160 acres of private land in a single ownership. In addition, both Dr. Mead and Mr. Swing overlooked section 12 of the Reclamation Extension Act of 1914 (38 Stat. 689), which was a reclamation law of general applicability then in effect. Section 12 required that owners of private excess lands agree to dispose of them before they could participate in a project. Both H.R. 6251 and H.R. 9826 incorporated the reclamation law by reference.

In contrast to the House bill, the Senate version of the fourth Swing-Johnson measure, S. 728, included no specific provision on acreage limitation relative to private lands. A bill introduced by Senator Phipps of Colorado, S. 1274, contained language similar to the Section 46 excess land provision,[13] and the Senate Committee on Irrigation and reclamation considered both S. 728 and S. 1274 in its hearings.[14] The Phipps bill never emerged from the Committee, whereas the Swing-Johnson measure was favorably reported.[15]

According to the minority statements filed by Senator Ashurst of Arizona and appended to the Committee report, the Committee either failed to act upon or rejected an amendment presented by him which would have added an express acreage limitation provision to S. 728.[16] No particular import can be ascribed to this incident related by Senator Ashurst. The record is devoid of any inference that a majority of the committee members, in failing to adopt the Ashurst amendment, favored an acreage limitation exemption for private lands. Even if Senator Ashurst's comments

13. Section 5(b) of S. 1274, 70th Cong., 1st Sess. (1928).

14. *Hearings on S. 728 and S. 1274 Before the Senate Committee on Irrigation and Reclamation,* 70th Cong., 1st Sess. (1928).

15. S. Rep. No. 592, 70th Cong., 1st Sess. (1928).

16. *Id.,* part 2, at 26.

could be interpreted as an expression of his view that without specific incorporation the excess land laws would not apply, the construction placed on a bill by an unsuccessful opponent is not a reliable indicator of its meaning: "An unsuccessful minority cannot put words into the mouths of the majority and thus, indirectly, amend a bill." *Mastro Plastics Corp.* v. *N.L.R.B.* 350 U.S. 270, 288 (1956). See also *Schwegmann Brothers* v. *Calvert Distillers Corp.*, 341 U.S. 384 (1951).

During the consideration of the fourth Swing-Johnson bill, Senators Ashurst and Hayden conducted a filibuster. Senator Hayden offered many amendments including one similar to the excess land proviso of H.R. 5773.[17] This amendment, like dozens of others presented and printed during the filibuster, never came to a vote. Discussion of hydroelectric power production at Boulder Dam and of the interstate apportionment of the waters of the Colorado River dominated the debates. The issue of acreage limitation was only one of many incidental points advanced by the opponents of S. 728. There is no indication that the failure of the Senate to act on the amendment evinced its rejection of the proposition that excess land provisions would be applicable to private lands in Imperial Valley.

The House passed H.R. 5773 on May 25, 1928.[18] On December 5, 1928, Senator Johnson made a motion to substitute H.R. 5773 for S. 728 in such a way as to retain the bill number and enacting clause of H.R. 5773, on the one hand, and the text of S. 728, on the other. Referring to the fact that the House and Senate versions of the bill contained "like purposes" and "like designs," Senator Johnson urged the consolidation in order to further "orderly legislative procedure." The motion carried.[19] The bill with amendments was passed on December 14, 1928.[20]

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17. 69 Cong. Rec. 7634-35 (1928).

18. 69 Cong. Rec. 9990 (1928).

19. 70 Cong. Rec. 67-68 (1928).

20. 70 Cong. Rec. 603 (1928).

The debates contain no evidence that any members of the Senate viewed what had occurred as exempting private lands from the excess land laws. Under certain circumstances the rejection of a provision on the floor of either house of Congress can be referred to as an indication of legislative intent. In the instant case, however, the Senate did not reject the House bill. It did not purport to pass upon it. In fact, it could be argued that since the principal proponent had represented that the two bills had the same purpose and design, they were substantially the same, i.e., land limitations were included in each — which indeed was the case.

No better guideline exists for approaching the legislative material related above than that provided by Justice Rutledge in the case of *Gemsco, Inc.* v. *Walling,* 324 U.S. 244, 260 (1945):

> The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.

The Boulder Canyon Project Act must be read *in pari materia* with the general body of reclamation law. The rules in such cases were stated by Mr. Justice Miller in *Wilmot* v. *Mudge,* 103 U.S. 217, 221 (1880), as follows:

> First, that effect shall be given to all the words of a statute, where this is possible without a conflict; and Second, that, as regards statutes *in pari materia* of different dates, the last shall repeal the first only when there are express terms of repeal, or where the implication of repeal is a necessary one. When repeal by implication is relied on it must be impossible for both provisions under consideration to stand, because one necessarily destroys the other. If both can stand by any reasonable construction, that construction must be adopted.

Excess land policy was the cornerstone of the reclamation law when the All-American Canal Project was authorized in 1928. "Derangement of a system thus rooted in

tradition" is not to be inferred from enactments which do not purport to alter that system, "where inveterate usage forbids the implication." Mr. Justice Cardozo, in *General Motors Acceptance Corporation* v. *United States,* 286 U.S. 49, 61-62 (9th Cir. 1932).

So firmly established are the excess land provisions of the reclamation law that Congress suspends their operation only where extraordinary circumstances dictate.[21] Where Congress has seen fit to waive or modify the excess land laws in certain projects, it has always found it appropriate to enact positive legislation setting forth the exemption or other modification in unmistakable terms.[22] Where Congress deems a departure from its established policy to be in order it so provides by express terms, and not by implication.

The doctrine of *pari materia* acquires special force in this case by virtue of the fact that the excess land laws had been undergoing a thorough overhaul since the report of the "Fact Finders" in 1924[23] and culminating in section

21. *Ivanhoe, supra,* at 292.

22. See Columbia Basin Antispeculation Act of May 27, 1937, 50 Stat. 208; Act of June 16, 1938, 52 Stat. 764 (Colorado-Big Thompson project); Act of October 14, 1940, 54 Stat. 1119 (water conservation and utilization projects); Act of November 29, 1940, 54 Stat. 1219 (Truckee River and Humboldt projects); Act of March 10, 1943, 57 Stat. 14 (Columbia Basin project); Act of June 27, 1952, 66 Stat. 282 (San Luis Valley project, Colorado); Act of August 28, 1954, 68 Stat. 890 (Owl Creek Unit, Missouri River Basin project); Act of September 3, 1954, 68 Stat. 1190 Santa Maria project); Act of August 1, 1956, 70 Stat. 775 (Washoe project); Act of August 6, 1956, 70 Stat. 1044 (small reclamation projects); Act of July 24, 1957, 71 Stat. 309-310 (East Bench unit, Missouri River Basin project); Act of September 4, 1957, 71 Stat. 608 (Kendrick project); Act of April 7, 1958, 72 Stat. 82 (Lower Rio Grande rehabilitation project, Mercedes division); Act of August 28, 1958, 72 Stat. 963 (Seedskadee project); Act of September 22, 1959, 72 Stat. 641 (Lower Rio Grande rehabilitation project, La Feria division); Act of September 27, 1962, 76 Stat. 634 (Baker project); and Act of October 1, 1962, 76 Stat. 677 (Columbia Basin project).

23. *Federation Reclamation by Irrigation,* S. Doc. No. 92, 68th Cong., 1st Sess. (1924).

46 of the 1926 Act. This activity is reflected in adoption as modified of many of the recommendations of the Fact Finders on excess lands, in an act authorizing an Indian project (Act of June 7, 1924, 43 Stat. 475), in appropriation acts (Act of December 5, 1924, 43 Stat. 672; Act of March 3, 1925, Stat. 1141; Act of May 10, 1926, 44 Stat. 453) and in the Omnibus Adjustment Act of 1926, *supra.* It is worthy of note that the Omnibus Adjustment Act was enacted in the Congress immediately preceding that which enacted the Boulder Canyon Project Act.

A holding that the landowners in Imperial Valley are exempt from acreage limitations must find support in clear language of the Project Act. Substantial rights were conferred by that act. A grant by the United States of rights, privileges or immunities is construed strictly against the grantee and what is not expressly granted is reserved. The Supreme Court has stated,

> The reason of [this] rule is obvious — parties seeking grants for private purposes usually draw the bills making them. If they do not make the language sufficiently explicit and clear to pass everything that is intended to be passed, it is their own fault; while, on the other hand, such a construction has a tendency to prevent parties from inserting ambiguous language for the purpose of taking, by ingenious interpretations and insinuation, that which cannot be obtained by plain and express terms.

Dubuque and Pacific Railroad v. *Litchfield,* 64 U.S. 66, 88-89 (1859). See also *United States* v. *Grand River Dam Authority,* 363 U.S. 229 (1960), *Slidell* v. *Grandjean,* 111 U.S. 412 (1883), *The Delaware Railroad Tax (Minot* v. *The Philadelphia, W. & B. R.R.),* 85 U.S. (18 Wall.) 206 (1874).

In *Wisconsin Central Railroad Co.* v. *U.S.,* 164 U.S. 190 (1896) the Court dealt with a situation analogous to that presented here. By an 1864 Act a grant of land was made to the railroad company, "upon the same terms and conditions" as in an 1856 Act. The 1856 Act provided that the rates for transporting mail could be fixed by Congress.

The act of March 3, 1873, prescribed the rates for transporting mail and provided that land grant railroads whose grant was on condition that Congress could fix the rates would receive 80% of the regular rate.

The company received 80 percent and sued in the Court of Claims for the balance of the regular rate. The Court held that the words "upon the same terms and conditions" incorporated in the 1864 Act, the provisions of the 1856 Act. "* * * [T]he settled rule is that statutes granting privileges or relinquishing rights of the public are to be strictly construed against the grantee." *Ibid.* at 202.

Applying the same rationale to the application of the acreage limitations to lands in Imperial Valley, section 14 of the Project Act incorporated the reclamation law, and the land limitation provisions of section 46 of the 1926 Act are part of the reclamation law. Nothing in the Project Act exempts the lands in Imperial Valley from section 46. Therefore, the land limitations of section 46 are a part of the Project Act; and since "statutes granting privileges or relinquishing rights of the public are to be strictly construed against the grantee," the excess land laws apply to the lands in Imperial Valley served by the federal project.

The Wilbur Letter and Prior Administrative Practice

The repayment contract of the Imperial Irrigation District with the United States was executed by Ray Lyman Wilbur, Secretary of the Interior, on December 1, 1932. Article 1 states the contract is made "pursuant to" the reclamation law and Article 30 states that "Except as provided by the Boulder Canyon Project Act, the reclamation law shall govern the construction, operation and maintenance of the works to be constructed hereunder."

It has been the practice of the Bureau of Reclamation to include in irrigation district contracts detailed requirements for the implementation of land limitation provisions. Such detailed requirements vary from case to case, but are substantially similar to those described in *Ivanhoe, supra,* at 285-86. No such detailed requirements were included in the Imperial Irrigation District contract, and to date the District has not complied with the excess land laws. Excess land provisions have been applied to lands within the Coachella Valley County Water District which are also serviced by the All-American Canal under contracts executed pursuant to the Boulder Canyon Project Act. Detailed provisions were included in the supplemental Coachella contract of December 22, 1947, in conformity with a ruling from the then Solicitor of the Department, Mr. Fowler Harper.[24]

An anomalous situation now exists. The two districts, Imperial and Coachella, while serviced by the same federally constructed facility, are accorded different administrative treatment as to excess land. The reasons for the administrative treatment accorded Imperial were announced in a letter, dated February 24, 1933, from the Secretary of the Interior Ray Lyman Wilbur to the Imperial Irrigation District.[25] See Appendix E for text.

24. Solicitor's Opinion, M-33902 (May 31, 1945). See Appendix H.

25. The Wilbur letter was written within three months following execution of the contract. While not relevant to the conclusion reached in this opinion, the record is ambiguous as to whether the Department had actually determined the excess land laws not to be applicable to Imperial Irrigation District prior to the execution of the contract. There is no direct evidence of such a conclusion. To the contrary, the only record we have been able to find of consideration of the question prior to the execution of the contract indicates that the excess land limitations did apply. On November 4, 1930, Executive Assistant to the Secretary Northcutt Ely stated that the excess land laws would have to be enforced in Imperial Valley. (Response No. 3 by Northcutt Ely. See Appendix D.)

The Wilbur letter itself states that the question was raised "early in the negotiations" and adds that "upon careful consideration the view was reached that this limitation does not apply to land now cultivated and having a present water right." When this conclusion was reached, the Secretary did not say.

The genesis of the Wilbur letter is found in a letter of February 4, 1933 (Appendix B), from Mr. Coffey to Porter W. Dent, Assistant Commissioner and Chief Counsel of the Bureau of Reclamation.

Mr. Coffey's letter takes no position but reports a conversation with Mr. Charles L. Childers, general counsel for Imperial.

Secretary Wilbur based his conclusion that the excess land laws do not apply to the private lands in the Imperial District on two contentions. The first was that no "sale" of a water right had occurred within the meaning of section 5 of the Reclamation Act of June 17, 1902,[26] because the private lands in the Imperial District had a vested water right which was recognized by the Congress in section 1 of the Project Act through the water-charge exemption.

26. 32 Stat. 389. "No right to the use of water for land in private ownership shall be sold for a tract exceeding 100 acres to any one landowner * * *."

Mr. Childers apparently told Mr. Coffey that Mr. Dent and Judge Finney, the Solicitor, had agreed during the contract negotiations that acreage limitations did not apply to Imperial. He requested a formal Solicitor's ruling to that effect but significantly, said Mr. Coffey, "He doesn't want any formal ruling, of course, if the Solicitor were to hold that the limitation applies * * *."

Assuming the Childers' conversation was correctly reported by Mr. Coffey — we have nothing directly from Mr. Childers — two facts are evident: first, that Mr. Childers is not certain that the application of the excess land laws is precluded by failure to incorporate detailed provisions in the contract; and, second, that he is not sufficiently certain that a conclusion has been reached that the excess land laws do not apply to preclude the possibility that a formal opinion might declare that they do.

Mr. Coffey's letter was transmitted to Mr. Ely by a memorandum of February 7, 1933 (Appendix B), from Mr. Dent. While the Dent memorandum, like the Wilbur letter, states that the question of applicability of the 160-acre limitation was raised "early in the negotiations connected with the All-American Canal contract," Mr. Dent went on to say that "So far as I am advised, all who have given this matter consideration agree that this limitation does not apply to lands now cultivated and having a present water right. The view has been, and is, I believe, that those lands having already a water right, are entitled to have such right recognized without regard to the acreage limitation mentioned."

It is to be noted that while Mr. Dent stated that the question had arisen "early in the negotiations," he did not state that it had been then resolved. His remarks which follow that statement are as susceptible to a present resolution of the matter as to a resolution in the course of the negotiations.

Secretary Wilbur's understanding of the word "sale" in section 5 of the 1902 Act has already been disposed of, and the fact, that Congress gave Imperial an exemption from charges "for water and the use, storage, or delivery of water" does not constitute the granting of a water right.

This point is not material to the question being considered in this memorandum since, as has been shown, the ownership of a water right does not preclude the application of the excess land laws. However, if it were material, it must be pointed out that the language of section 1 of

By memorandum of February 16, 1933, Mr. Ely advised Mr. Dent that he concurred in the Dent view and requested Mr. Dent to prepare what became the Wilbur letter (Appendix C).

The only other contemporary departmental record heightens the ambiguity as to when the conclusion announced in the Wilbur letter was actually reached. This is the March 1, 1933, letter from Mr. Dent to Mr. Coffey (Appendix F). In this letter Mr. Dent referred to the opinion that he had shared with Mr. Coffey early in the negotiations that some specific provision should be inserted regarding acreage limitation. He then stated that representatives of the District feared that a specific provision "would only be confusing and make ratification by the landowners more difficult." He went on to say that the ground relied on by the Wilbur letter, i.e., non-applicability of the acreage limitation to lands having a vested water right, "Is the ground upon which you and I with reluctance agreed to elimination of the specific provision regarding acreage limitation." It is not clear from this statement whether Mr. Dent reluctantly agreed with that ground prior to execution of the contract, or only reluctantly agreed to delete a reference to excess lands on that ground.

In any event, in the extensive department files covering the negotiation of the Imperial contract, save for Mr. Ely's memorandum of November 4, 1930, there has been found no contemporary record either of legal analysis or discussion of the excess land question. On the other hand, these files do reveal that counsel for the Imperial District was not satisfied that a decision had been reached in the Department prior to execution of the contract, and sought formal assurance on the question. The request for formal decision was rejected in favor of the informal Wilbur letter. Neither in that letter nor in the memoranda leading up to its preparation is the ambiguity of when the decision was first reached resolved.

the Project Act does not in terms create or recognize a water right, it merely exempts from a charge. And as already noted "the established rule of construction in such cases is, that rights, privileges, and immunities not expressly granted are reserved. There is no safety to the public interests in any other rule." *The Delaware Railroad Tax (Minot* v. *The Philadelphia, W. & B. R.R.)*, 85 U.S. (18 Wall.) 206, 225 (1874).

For the same reason the requirement in section 6 for "satisfaction of present perfected rights" cannot be read as insulating the District lands from acreage limitation. It is not in plain terms an exemption from the limitations of reclamation law in connection with the obligation to repay the cost of Imperial Dam and the All-American Canal.

We turn now to Secretary Wilbur's second contention, namely, that the Department had interpreted section 5 of the 1902 Act to permit the recognition of a water right for more than 160 acres in single ownership by allowing the continued flow of water covered by the right through federal project facilities.

This had been the position of the Department in the special situation where existing physical facilities were being acquired by the Government for incorporation in a project. In such cases, lands to which the water right was appurtenant were considered to be outside the project.

The first authority cited by Secretary Wilbur, Opinion of Assistant Attorney General, 34 L.D. 351 (January 6, 1906), serves to illustrate the limited nature of this practice. There, an entire irrigation system already partially completed and in service, owned by a private land and irrigation company, was proposed to be acquired by the United States at a purchase price of $15,000. It was to be incorporated into a larger federal reclamation project (East Umatilla). The agreement contemplated that some 8,000 to 9,000 acres of project land owned by the company would be placed in trust for sale to individuals in units conforming to the acreage limitations prescribed in accordance with sections 4 and 5 of the 1902 Act.

The company's water rights, held or claimed, were to be included in the conveyance to the United States except for the reservation by the company of a water right sufficient to irrigate 300 acres of land it proposed to retain. It was explained by the Director of the Geological Survey (of which the Reclamation Service was then — 1905 — a part) that to purchase the water right for the 300 acres would require a larger expenditure then could be justified.[27] The government agreed to satisfy this right through project works. The company was not to pay any construction charges although it was to pay for operation and maintenance.

The Director pointed out that:

> The furnishing of this water supply as part consideration is therefore a condition favorable to the United States. Besides, it is the usual practice in cases where an existing irrigation system is purchased for enlargement, to agree to furnish a water supply to the prior owners, frequently without even reserving the right to make a charge for maintenance. This practice is founded on sound business principles for it is always cheaper to furnish the water when available than to buy the right to water which has already vested.
>
> * * * * * * *
>
> If for instance the government were merely to recognize a vested right for water for 300 acres, the company could utilize the right only by building a canal system paralleling the government system or else the government would be required to forego the advantage of using the company's works now constructed.

He viewed section 10 of the 1902 Act[28] as authorizing the arrangement.

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27. Memorandum from Director, Geological Survey, to Secretary of Interior, November 16, 1905. See Appendix A.

28. 32 Stat. 390, 43 U.S.C. sec. 373. The section authorizes the Secretary "to perform any and all acts and to make such rules and regulations as may be necessary and proper" for the purpose of carrying the provisions of the Act into full force and effect.

Assistant Attorney General Campbell, to whom the matter was referred for consideration, thereupon issued the decision cited in the Wilbur letter. The Assistant Attorney General concluded that under the transaction, the 300 acres covered by the reserved right, "is not brought within the limits of [the] project," *Supra* at 354. He held that the agreement did not conflict with section 5.[29]

The cases of the Newlands (Truckee-Carson) and North Platte projects alluded to by Secretary Wilbur involved comparable purchases of existing private irrigation works.[30]

This practice referred to by Secretary Wilbur is not a precedent for the Imperial Valley situation. The United States acquired no preexisting facilities; the Imperial lands were not only a part of the project, they were the primary reason for the project; and finally, the lands in Imperial were not exempted from, but were expressly required to repay, construction charges for the All-American Canal, Imperial Dam, and appurtenant structures "in the manner provided by the reclamation law." Section 4(b) of the Project Act.

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29. While the Wilbur letter does not cite it, the 1906 ruling was followed on May 31, 1910, by a departmental regulation (38 L.D. 637, para. 45), which is currently found at 43 CFR 230.70:

    The provision of section 5 of the act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 381, 392, 431, 439), limiting the area for which the use of water may be sold, does not prevent the recognition of a vested right for a larger area and protection of the same by allowing the continued flowing of the water covered by the right through works constructed by the Government under appropriate regulations and charges.

    As is apparent from comparison of its text with a headnote to the 1906 decision, this regulation was evidently intended as no more than codification thereof.

30. See Department of the Interior *Second Annual Report of the Reclamation Service*, 1902-3, at 368-69 (1904), and *Fourth Annual Report of the Reclamation Service*, 1904-5, at 236 (1906).

    Anna M. Wright, 40 L.D. 116 (1911), also referred to in the Wilbur letter, merely cited the 1910 regulation. It has no relevance to the question here involved.

On the other hand, the practice of the Department in respect or the carriage of water through reclamation project facilities for the irrigation of desert land entries shows an intention to apply excess land limitations of reclamation law if project benefits are received. This situation is analogous to that presented by the privately owned lands in the Imperial Irrigation District.

To obtain a desert land entry, an entryman must demonstrate the fact and legal sufficiency of his water right. If the claim is one of an appropriative right, he must show that he has taken all necessary steps to perfect that right as one of the requirements of making final proof. *Instruction,* November 16, 1906, 35 L.D. 305, 43 CFR 2226.1-5(h).

By section 5 of the Act of June 27, 1906 (34 Stat. 520, 43 U.S.C. sec. 448) a desert land entryman is permitted under certain circumstances to bring his entry under a reclamation project and obtain a water supply through the project if he complies with reclamation law and relinquishes that part of his entry in excess of 160 acres. The Department's regulation under this act states, however, that —

> Special attention is called to the fact that nothing contained in the act of June 27, 1906, shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation act of June 17, 1902, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.[31]

In short, the desert land entryman, who for this purpose is treated like the owner of patented lands, has a choice. He can rely on his own efforts to convey his water to his entry without assistance from the government project, thereby avoiding the requirements of the reclamation law, or he can participate. In the latter case he must observe the law's requirements including land limitation.

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31. *Regulations,* May 31, 1910, 38 L.D. 646, para. 78; currently, 43 CFR 230.110.

It is evident that neither the existence nor nonexistence of a vested water right is itself determinative of whether the excess land laws are applicable in any given case. Where, as here, the claimants of existing water rights have sought and obtained the construction of a federal reclamation project to eliminate the hazards of drought, flood and silt and to obtain a canal entirely within the United States, they must accept the conditions imposed by federal law.

Administrative Practice
Subsequent to the Wilbur Letter

As soon as the Wilbur letter was issued representatives of the District expressed concern that reliance had been placed exclusively on section 5 of the 1902 Act whereas the principal problem was the effect of section 46 of the 1926 Act. Assistant Commissioner and Chief Counsel Dent replied[32] to this suggestion by stating that section 46 was only an incorporation of section 5 of the 1902 Act as construed by the Wilbur letter. Dent conceived, albeit "with reluctance," that section 5 precluded application of the excess land laws to lands having a vested water right. We have already disposed of this argument and have analyzed section 5 of the 1902 Act and the Acts supplementary thereto, including section 46 of the 1926 Act.

Mr. Dent also argued that the Boulder Canyon Project Act was complete in itself and did not incorporate reclamation law. This argument completely ignores the import of sections 1, 4(b), and 14 of the Project Act.

In 1944, William E. Warne, Assistant Commissioner of Reclamation, testifying before a Senate subcommittee, stated that acreage limitation provisions relative to private lands were not carried into effect by the Boulder Canyon Project Act and had not been applied to Imperial Valley.[33] The following day, the Assistant Commissioner

32. Letter from Porter W. Dent to Richard J. Coffey, March 1, 1933. See Appendix F.

33. *Hearing on H.R. 3961 before the Subcommittee of the Senate Committee on Commerce,* 78th Cong., 2d Sess., pt. 5, at 599 (1944). See Appendix G.

qualified this testimony by linking the exemption not to the law but directly to the Wilbur letter,[34] thereby revealing that his statements were not based on new and independent legal research.

Doubts as to the legal validity of the Wilbur opinion were expressed in December of 1944 in connection with negotiations for a supplemental contract between the United States and the Coachella Valley County Water District. Commissioner of Reclamation Bashore advised the Secretary on December 15, 1944, that —

> Probably because of an informal decision of the then Secretary of the Interior, Ray Lyman Wilbur * * * *, the Coachella contract of October 15, 1934, contained no provision for enforcement of the excess-land provisions * * *. The correctness of the 1934 contract's disregard of the excess-land laws is doubtful, in the opinion of the Chief Counsel of the Bureau; and he is of the opinion that the proposed contract is subject to the excess-land laws * * *. Because the applicability of a Departmental ruling is involved, and perhaps the soundness of that ruling, I recommend that this matter be referred to the Solicitor for an opinion on the applicability of the excess-land laws to the proposed contract.[35]

The matter was referred to Solicitor Fowler Harper, who rendered a formal opinion holding that the Wilbur letter was not intended to apply to Coachella lands.[36] But this limited finding did not prevent the Solicitor from raising serious doubts as to the validity of the Wilbur opinion. In contrast to the Wilbur letter, Fowler Harper's opinion construed the Project Act as incorporating the excess land provisions of the reclamation law.

The apparent inconsistency in administrative treatment on excess lands accorded the Imperial and Coachella districts gave rise to an inquiry from the Veterans of Foreign

34. *Id.* at 764.

35. Memorandum from Commissioner Bashore to Secretary Ickes, December 15, 1944.

36. Solicitor's Opinion, M-33902 (May 31, 1945). See Appendix II.

Wars to the Secretary in March of 1948. In reply, then Secretary Julius A. Krug confirmed the fact that different administrative practices were followed with regard to the two districts:

> Concerning * * * the substantive questions which relate alike to both districts, we have concluded that inasmuch as the Secretary of the Interior then charged with the administration of law construed the acreage limitation as not being applicable to lands of the Imperial Irrigation District under the facts as he then understood them, and it being clear that the then owners and subsequent purchasers of irrigable lands in the Imperial Irrigation District were entitled to rely upon advice from the Secretary and thus establish an economy in the district consistently with that advice, they should not now be abruptly advised that the economy of the project is to be changed under a contrary ruling of the present officer charged with the administration of the law.
>
> To the extent, therefore, that the actual fact situation with respect to lands and water rights may be identical in the two districts in question, and to the extent that the advice furnished in the *Coachella* case would otherwise be applicable in the *Imperial* case, we feel that we must allow that inconsistency, if such there be, to continue. I think that you will understand the position which the Department must take in this matter in fairness to those who have relied on its action, even though that action might now be subject to valid question.[37]

It is pertinent to observe that Secretary Krug does not purport to give a legal interpretation of the Imperial question in the above entry. Solely in deference to considerations of economic reliance, the Secretary elected to continue the practice of exempting the Imperial lands from acreage limitations.

In 1958 the question of acreage limitation in Imperial Valley was raised outside the Department of Interior in proceedings held before the Hon. Samuel H. Rifkind,

37. Letter from Secretary Krug to H. C. Herman, April 27, 1948. See Appendix I.

Special Master of the Supreme Court, in the case of *Arizona* v. *California*. In its oral argument the State of Arizona sought certain admissions relative to Imperial Irrigation District's noncompliance with the excess land provisions of the reclamation law.[38] The Special Master asked that memoranda be submitted on the question of whether a motion for admission ought to be granted. Pursuant to this request the Solicitor General of the United States, Hon. J. Lee Rankin, sought the views of the Solicitor of the Department of Interior, Elmer F. Bennett.[39] Solicitor Bennett, while doubting that acreage limitation had any relevance to the major issue of water entitlement, voiced the following concerns which were reminiscent of those expressed a decade earlier by Secretary Krug:

> * * * I have not had occasion to undertake a legal analysis of the respective views heretofore expressed by Secretary Wilbur and former Solicitor Harper. Whatever the conclusion might be, to my mind the time has long since passed when it is realistic and practicable to do so. * * *
>
> The water contract between the United States and the Imperial Irrigation District was executed December 1, 1932, some 25 years ago. The negotiations leading to the contract were lengthy and extensively in the public view. Except at the time of court confirmation, I am not aware of any challenge as to the legality of the contract during this entire period. Water has been delivered to the lands of Imperial District pursuant to the contract since the early 1940's. I am not aware that any administrative action has been proposed or taken either by the preceding administration or by this one to recognize or enforce application of the 160-acre limitation to the lands of the Imperial Irrigation District.[40]

38. Record, vol. 94, pp. 15, 550-15, 601, *Arizona* v. *California*, 373 U.S. 546 (1963).

39. Letter from the Hon. J. Lee Rankin to Elmer F. Bennett, January 24, 1958.

40. Letter from Elmer F. Bennett to the Hon. J. Lee Rankin, February 5, 1958. See Appendix J.

It is important to note that no pretense was made at offering a legal opinion on the Imperial question.

The memorandum filed in behalf of the United States took the position that the issue of noncompliance had no relevancy to the *Arizona* v. *California* dispute at bar.[41] The Solicitor General did not refrain, however, from expressing his opinion on the merits of the issue posed by the State of Arizona:

> Briefly, it may be stated that for the reasons stated in Solicitor Harper's opinion, as well as others, no conclusion seems permissible other than that the limitations of the reclamation law upon the quantity of privately owned lands which might receive irrigation water under the All-American Canal are applicable in the Imperial Valley just as are the similar limitations relating to public lands opened for entry within the district.[42]

Finally, there is the 1961 inquiry of the then Chairman of the Senate Committee on Interior and Insular Affairs and the inquiry of Senator Kuchel in April of 1964 during the hearing on S. 1658 which were adverted to at the outset of this opinion.

Effect of Administrative Practice

The facts in this case apparently suggested to Secretary Krug and Solicitor Bennett that the Wilbur letter, the long practice of non-enforcement and the reliance which may have been placed on these circumstances by private parties, precluded a re-examination of the legal basis for the exemption of lands in Imperial Valley from acreage limitations. Other circumstances have compelled us to make that examination, and we have found Secretary Wilbur's ruling to be without legal foundation. The question now is whether the Wilbur ruling, the long practice

41. Memorandum in Behalf of the United States with Respect to Relevance of Noncompliance with Acreage Limitations of Reclamation Law, February 28, 1958, *Arizona* v. *California,* 373 U.S. 546 (1963).

42. *Id.* at 3, fn. 5. See Appendix K.

of non-enforcement and the assumed reliance can have the effect of validating the exemption which was initially without legal justification. The answer is, of course, that they cannot.

It is well settled that administrative practice cannot " * * * thwart the plain purpose of a valid law." *United States* v. *City and County of San Francisco,* 310 U.S. 16, 31-32 (1940). Even if it might be said that Secretary Wilbur's interpretation of section 5 of the 1902 Act was plausible, the law in 1933, when he wrote, included the 1912 Act, the 1914 Act and the 1926 Act, which clearly forbade the conclusion he reached and which he completely ignored. As Judge Story said, "One cannot wink so hard as not to see...." *The Henry Ewbank,* 1 Summ. 400, 11 Fed. Cas. 1166, 1168, Fed. Cas. No. 6,376 (1833).

Long practice, especially long practice of neglect, cannot make legal that which was initially illegal. The Supreme Court in *Baltimore and Ohio Railway Co.* v. *Jackson,* 353 U.S. 325 (1957) and *United States* v. *DuPont & Co.,* 353 U.S. 586 (1957), cases involving administrative positions of more than 60 and 40 years' standing, respectively, upset them to require compliance with the plain language of the law.

Finally, the fact that private parties may have relied upon the Wilbur ruling would not alter our conclusion. "Of this it is enough to say that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." *Utah Power & Light Co.* v. *United States,* 243 U.S. 389, 409 (1917). The Government holds its interests in trust for all the people and its agents cannot estop the United States by neglect or acquiescence. *United States* v. *California,* 332 U.S. 19, 40 (1947).

State Court Proceedings

The only issue remaining is whether the state court confirmation proceedings or the decision in the *Malan* case preclude present inquiry into the validity of the administrative acreage limitation exemption. It is clear that they do not.

The confirmation action (*Hewes* v. *All Persons,* No. 15460, Superior Court of Imperial County, California) was filed in 1933 pursuant to Article 31 of the Imperial Contract and in accordance with section 46 of the 1926 Act.

In a finding of fact the court concluded that the contract would not impose excess land limitation[43] and it entered a decision holding the excess land laws inapplicable.[44]

It suffices to say that the United States, not having intervened as a party and, since it is not suable without its consent, not having been reached by the "in rem" nature of the action, is not bound by either the finding, the decision, or indeed by the judgment finally entered.

The Malan case *(Malan* v. *Imperial Irrigation District)* proceeded in the same court and concurrently with the confirmation action. Malan, an excess landowner, asserted the repayment contract to be invalid under California law because it subjected the district to the excess land laws. It was the *Malan* case that gave rise to the request for a ruling which resulted in the Wilbur letter. Malan's case was dismissed in the same unreported decision that confirmed the contract, the court holding that the contract did not impose acreage limitations.

Again, the United States not having been a party, it is not bound by this decision. Contrary to Malan's contention it should be noted that California law does not preclude an irrigation district from contracting to observe the federal excess land laws. *Ivanhoe Irrigation District* v. *All Persons,* 2 Cal. Reptr. 317, 350 Pac. 2d. 69 (1960).

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43. Finding of Fact No. 35, July 1, 1933.

44. Superior Court, Imperial County, unreported.

Conclusion

The Boulder Canyon Project Act by its plain terms incorporates those provisions of law which impose acreage limitations on lands served from federal reclamation projects. The Boulder Canyon Act works, including the All-American Canal, Imperial Dam and appurtenant structures, are federal reclamation facilities. Nothing in the history of the Project Act and nothing in the legislative history of reclamation law modifies what has been expressed by Congress as its plain intent.

The interpretation in the Wilbur letter of the meaning of the Project Act was clearly wrong and could not effect a change in the statutes enacted by Congress. The fact that the Department has failed for over 30 years to enforce the excess land laws acreage limitations in Imperial Valley cannot legitimize a violation of public policy contrary to the spirit and the letter of the law.

I have concluded, after a consideration of all issues, that the question stated on page 3 of this memorandum must be answered in the affirmative: Privately owned lands in Imperial Irrigation District, even those assumed to have vested Colorado River water rights, are subject to the excess land laws.

FRANK J. BARRY,
Solicitor.

APPENDIX

This Appendix is voluminous because many of the records which are pertinent to this opinion are not published elsewhere.

Items:

A Memorandum from the Director of Geological Survey to the Secretary of Interior, November 16, 1905.

B Memorandum from Porter W. Dent to Northcutt Ely, February 7, 1933.

C Memorandum from Northcutt Ely to Porter W. Dent, February 16, 1933.

D Item No. 8 posed by Richard J. Coffey and response No. 8 by Northcutt Ely, November 4, 1930.

E Letter from Secretary Wilbur to Imperial Irrigation District, February 24, 1933.

F Letter from Porter W. Dent to Richard J. Coffey, March 1, 1933.

G Testimony of William E. Warne, Assistant Commissioner of Reclamation, during Hearing on H.R. 3961 before a subcommittee of the Senate Committee on Commerce, 78th Cong., 2d Sess. 599, 764 (1944).

H Solicitor Harper's Opinion, M-33902 (May 31, 1945).

I Letter from Secretary Krug to H. C. Hermann, April 27, 1948.

J Letter from Solicitor Bennett to Solicitor General Rankin, February 5, 1958.

K Footnote 5 of the Memorandum in Behalf of the United States with Respect to Relevance of Non-Compliance with Acreage Limitations of Reclamation Law, filed in the case of *Arizona* v. *California*, No. 10 Original, October Term 1957, Before the Honorable Simon H. Rifkind, Special Master.

L Letter from Senator Clinton P. Anderson to Secretary Udall, August 7, 1961.

M Letter from Secretary Udall to Senator Clinton P. Anderson, May 15, 1962.

APPENDIX A

November 16, 1905.

The Honorable the Secretary of the Interior,
Dear Mr. Secretary:

By reference from the Department under date of November 11, I am in receipt of my letter of the 8th instant recommending that $1,000,000 be set aside for the Umatilla Project in Oregon.

Said letter was returned with the following indorsement:

> Respectfully returned to the Director of the Geological Survey for report on the following propositions:
>
> 1. Do not the provisions of paragraph 2 of the enclosed agreement conflict with the provisions of paragraph 5 of the Reclamation Act prohibiting the right to the use of water on land in private ownership in excess of 160 acres.
>
> 2. Are not the provisions of paragraph 11 likewise in conflict with the provisions of said paragraph 5 of the Reclamation Act.
>
> 3. What authority has the Secretary of the Interior, under existing law, to approve the provisions of paragraph 13 of said agreement which contemplates the extension of time for compliance with the provisions of the Desert Land Act.
>
> Return all enclosed papers with your reply.

The first proposition calls attention to the provisions of paragraph 2 and asks whether or not they conflict with the provisions of section 5 of the Reclamation Act, "prohibiting the right to the use of water on land in private ownership in excess of 160 acres."

In paragraph 2 of the contract it is provided that the United States shall recognize a vested right in the said company for 300 acres to be hereafter selected by it. These lands are now owned by the company and it has, as stated in my letter of transmittal, partially completed the construc-

tion of a canal system to irrigate them. The company had already furnished water to certain of its lands and proposed to continue the construction until the canal would be completed to cover the entire area owned by it, which would give them a vested right for water for nearly 9,000 acres. The claim to water for the greater part or the whole of this area would then be established, for the company has been diligently prosecuting its work.

There has already been established in the company a vested right to the use of part of these waters and the company would either require the recognition of this right or else payment at the rate of $50 an acre therefor. This would be a much larger amount than is involved in furnishing the water supply in question for 300 acres, for the reason that the right of the company to a certain amount of the waters of Umatilla River can be utilized in the project without additional expense.

As the entire project is intended to irrigate about 20,000 acres, the amount of water required to irrigate 300 acres would be one-sixty-sixth of the entire amount of water carried in the system, and as the main feed canal for the reservoir is to carry flood water and must be of sufficient size to carry a large volume in a short time, the storage of the added quantity required for 300 acres would involve no additional expense. Furthermore, the lateral system of the project must cover the entire area irrigated and would necessarily be built of the same extent whether or not these 300 acres were to be irrigated.

The furnishing of this water supply as part consideration is therefore a condition favorable to the United States. Besides it is the usual practice in cases where an existing irrigation system is purchased for enlargement to agree to furnish a water supply to the prior owners, frequently without even reserving the right to make a charge for maintenance. This practice is founded on sound business principles for it is always cheaper to furnish the water when available than to buy the right to water which has already vested.

The water right for at least 300 acres has now vested in the company and it is such a right as would be subject to the provisions of section 8 of the Reclamation Act, that nothing therein "shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use or distribution of water used in irrigation or *any vested right acquired thereunder.*"

If for instance the government were merely to recognize a vested right for water for 300 acres, the company could utilize the right only by building a canal system paralleling the government system or else the government would be required to forego the advantage of using the company's works now constructed.

In the former case the government would be required to pay the company the additional cost to them of new construction without deriving any benefit from such expenditure, for the government system as proposed would carry the required water supply without extra cost for construction. The necessary crossing and recrossing of a parallel system would also add to the cost of the government system.

In the latter case the government would be required to spend a greater sum in the construction of its system because it would not have the use of the excavation and other work already performed by the company. There would be further expense for right-of-way as most of the odd sections crossed are railroad lands now in the hands of other parties.

Congress could not have had in mind that the vested rights should be recognized and at the same time deprive the parties of the existing means of conveying the water, for such has not been the practice, as must have been well-known to all the members of Congress from the Reclamation States. In fact the laws of most western States provide for the enlargement of ditches and occupation in common by the parties, and the courts of all the States of the West have repeatedly recognized this right, which is just as essential in irrigation matters as the common right of

occupancy of canyons, passes and defiles by railroad companies, recognized by section 2 of the Act of Congress of March 3, 1875 (18 Stat. 482).

It is understood by this office that section 8 of the Reclamation Act authorizes and requires the Secretary of the Interior to recognize such vested rights and it has heretofore been the policy of the engineers of the Reclamation Service in negotiating contracts of this kind to provide for the recognition of such rights and the furnishing of the water whenever this plan would be cheaper than to pay for the water rights involved.

It is believed that the prohibition of section 5 of the Reclamation Act that, "no right to the use of water for land in private ownership shall be *sold* for a tract exceeding 160 acres to any one landowner," does not apply to such cases as this, because the water right is not sold, belonging as it does to the company, and such ownership being recognized by the contract.

This water right having vested in the company and not being subject to sale by the Secretary of the Interior, the carriage of the water does not seem to be prohibited by the Reclamation Act.

I find nothing in the Reclamation Act which prohibits such treatment of vested rights to the use of water, and the general authority given to the Secretary of the Interior by section 10 of the act, "to perform any and all sets and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect" was evidently intended to cover the many details of administration of this kind arising in connection with such a complex business system as a large irrigation enterprise, and which could not be specifically provided for in a general act.

This question was considered by the Department in passing upon the purchase of the system of the Klamath Falls Irrigating Company (Ankeny Canal), October 9, 1905 (Assistant Attorney General's opinion of October 3) and doubt was expressed upon these points.

The negotiations with the Maxwell Land and Irrigation Company had been concluded and the form of contract agreed upon, before this opinion was known to the engineers engaged upon this matter.

The present contract was submitted to the Department for consideration in connection with a discussion which was in course of preparation for presentation to the Department in order that these questions might be again considered along lines similar to the present discussion. The letter concerning the Klamath Falls Irrigating Company's case will be forwarded in a few days.

The second proposition of the endorsement refers to paragraph 11 of the contract with the company. The intent of the paragraph is to permit the company to operate its present water system and to supply to certain parties, with whom they have contracts, water sufficient to complete their cultivation under the Desert Land Act, until such time as the government project shall be completed and in operation. The government undertakes no responsibility for furnishing water to the lands specified under this paragraph in schedule A. The company is to continue the operation of its system for this purpose until the government system has been completed, in which case the parties in question will either make application under the Reclamation Act or receive no further water supply. It was stated to the engineers negotiating this agreement that these parties proposed to make final proof next year.

It was supposed that the provisions of paragraph 11 would be acceptable as they cannot be understood as placing any obligation upon the government to furnish water to the lands listed in schedule A.

The third proposition of the indorsement of the Secretary relates to paragraph 13 of the contract with the company, in which it is agreed, (1) that the desert land entrymen listed in schedule B may complete the acquisition of their lands by obtaining water under the Reclamation Act; (2) that they shall have such extension of time in which to conform to the requirements of the desert land act as may become necessary on account of their obtaining water for

such lands from the reclamation project; and (3) that water shall not be furnished for more than 160 acres to each of such claimants.

The first and third of these provisions conform to the decision of the Secretary of the Interior of July 14, 1905 (Department letter No. 230-1903), holding that desert land entrymen could be recognized as proprietors of the land entered, within the spirit and purpose of the Reclamation Act, and that if the entry involves more than 160 acres of irrigable land the entryman must relinquish the excess.

The second provision of paragraph 11 of the contract involves the question of extension of time. In the Departmental letter referred to it was stated that it is not advisable to anticipate that question.

As the matter of extending the time for these desert land entries was of great importance, it was deemed advisable that the matter should be made part of the contract and in that manner be brought to the attention of the Department for consideration and decision.

The company, as stated in paragraph 12 of the contract, is under obligations to furnish water to these entrymen in order that they shall be able to comply with the Desert Land law, the entries having been made in view of the proposed construction of the company's canal system which would probably have been completed next spring if the government project had not intervened.

These entrymen would be left in a very uncertain position as to the validity of their entries if they should bring themselves within the provisions of the Reclamation Act in pursuance of the provisions of Departmental letter of July 14, 1905, and at the same time find themselves unable to make proof under the Desert Land Act. It would therefore be unlikely that any of them would bring their lands within the project until it should be determined that they would be permitted to make final proof when the Government had furnished water from the project, even though at a later period than was contemplated by their entries.

The entrymen could not be expected to release the Maxwell Land & Irrigation Company from its obligation to furnish the water unless they were assured that they could make proof by means of the water supply furnished under the Reclamation Act.

If they were compelled to rely upon the smaller system of the company which would be built if the Reclamation project were not, the lands might be irrigated sufficiently to comply with the Desert Land Act but they would not be nearly so productive as if irrigated under the reclamation project. It is therefore not only an advantage to the project if these entrymen can be brought within the provisions of the Reclamation Act, but also of general benefit to the Government and all public interests, as providing for a more efficient and productive use of the land in question.

The authority of the Secretary of the Interior to allow final proof to be made at such time as would be possible under the Reclamation project seems to be deducible from several Departmental decisions, as for instance the case of *Thompson* v. *Bartholet,* 18 L.D. 96 (1894).

The rule of the board of equitable adjudication therein quoted specifies certain causes of failure on the part of the entryman which can be considered in connection with the matter of confirming the entry, among them, "obstacles which he could not control."

The conditions existing in these cases would come within this description as the withdrawal of this company and its decision not to complete its system would clearly be an obstacle which he could not control.

Under the decision in *Thompson* v. *Bartholet, supra,* a continuance of the effort on the part of the entryman to comply with the law in good faith would authorize the acceptance of his proof after the expiration of the statutory period and bar the attachment of an adverse claim.

Under the terms of Departmental letter of July 14, 1905, referred to, the question of extending the time was left unsettled and it was therefore assumed that an investi-

gation of the matter along the lines herein indicated might result in a decision that such action could be authorized, and it was supposed that upon consideration of the contract in question the Department would decide whether such action could be taken.

The papers transmitted are herewith returned as directed.

Very respectfully,

THOMAS WALCOTT,
Director.

APPENDIX B

February 7, 1933

Memorandum for Mr. Ely

Attached letter of February 4 from District Counsel Coffey is self-explanatory.

This letter refers to the suit now pending in the Superior Court of Imperial County, California entitled *Charles Malan* v. *Imperial Irrigation District et al.* Among other things the complaint in this case contain the following allegation:

> And it is further provided by the reclamation law of the United States that water shall not be delivered from any canal so constructed by the Secretary of the Interior under the said reclamation law to any landowner owning more than 160 acres of land.

The foregoing is an incorrect statement of the reclamation law in this respect. Presumably the pleader intends to refer to section 5 of the Reclamation Act of June 17, 1902, which reads in part as follows:

> No right to the use of water for land in private ownership shall be *sold* for a tract exceeding 160 acres to any

> one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made.

It will be noted that the reclamation law instead of providing, as alleged, that no water shall be delivered from a canal constructed by the Government to any tract exceeding 160 acres in area, provides that no water shall be *sold* for a tract in excess of 160 acres in single ownership.

The All-American Canal contract with the Imperial District does not provide for the sale of storage water for use in the Imperial and Coachella Valleys. The contract, in article 17, provides merely for the delivery of water for use in these valleys through the works to be constructed by the United States. No charge whatever is made for the water so to be delivered, and under the provisions of the Boulder Canyon Project Act no such charge can legally be made. From section 1 of this act for convenient reference the following is quoted:

> * * * *Provided, however,* That no charge shall be made for water or for the use, storage, or delivery of water for irrigation of water for potable purposes in the Imperial or Coachella Valleys * * *.

Early in the negotiations connected with the All-American Canal contract the question was raised regarding whether and to what extent the 160-acre limitation is applicable to lands to be irrigated from this proposed canal. So far as I am advised, all who have given this matter consideration agree that this limitation does not apply to lands now cultivated and having a present water right. The view has been, and is, I believe, that these lands having already a water right, are entitled to have such right recognized without regard to the acreage limitation mentioned. Congress evidently recognized that these lands had a vested water right when the provision was inserted that no charge shall be made for the storage, use or delivery of water to be furnished these areas.

In connection with the activities of the Bureau it has been held that the provisions of section 5 of the reclamation act restricting the sale of a right to use water for land in private ownership to not more than 160 acres will not prevent the recognition of a vested water right for a larger area, and protection of the same by allowing the continued flowage of the water covered by the right through the works constructed by the Government. (*Opinion of Assistant Attorney General,* 34 L.D. 351 (1906); *Anna M. Wright,* 40 L.D. 116 (1911)). On many projects it has been the practice to recognize vested rights in single ownership in excess of 160 acres and to deliver the water necessary to satisfy such rights through works constructed by and at the expense of the Government. This is true of the Newlands project, the North Platte project, the Umatilla project, and others.

It is my view that the limitation quoted from section 5 of the Reclamation Act does not apply to those areas now cultivated and having a vested right to the use of water.

The provision quoted from section 5 relates to land in private ownership. This of course would not apply to the tributary public lands to be included within the boundaries of the district. While this particular provision would not be applicable to the public lands, they would be governed by section 4 of the reclamation act and other provisions which limit the area of public lands that may be entered to a farm unit required for the support of a family. This area will be such as may be fixed by the Secretary, consisting of not less than 10 nor more than 160 acres. (Section 9 of the Boulder Canyon Project Act and act of June 27, 1906, 34 Stat. 519).

This matter is submitted for your consideration and such action as may be considered advisable. If the Department is in agreement with the foregoing I believe a letter to the district or a formal decision to that effect would be helpful.

PORTER W. DENT,
Assistant Commissioner.

608 Grant Building,
Los Angeles, California,
February 4, 1933.

Mr. P. W. Dent
Assistant Commissioner
Bureau of Reclamation
Washington, D.C.

Dear Mr. Dent:

Mr. Childers, attorney for Imperial Irrigation District, advises me that he is very much worried over that particular part of the complaint in the Malan suit, copy of which you have in the files at Washington, which claims that the All-American Canal contract is illegal because of the feature of the general reclamation laws which restricts the use of water to one hundred sixty acres. He advises me, also, that at one time he discussed the matter with Judge Finney, and with you, and that you were both of the opinion that the 160-acre restriction on the use of water, found in the reclamation laws, didn't apply to the All-American Canal contract.

Childers is very anxious to get a ruling on the point from the Solicitor, prior to the hearing of the confirmation proceedings and the Malan suit, both of which are to be called up for hearing on March 6, next; provided, that such ruling would be that the 160-acre limitation did not apply. He doesn't want any formal ruling, of course, if the Solicitor were to hold that the limitation applies so far as Imperial Irrigation District is concerned.

I wonder if it wouldn't be a good plan for you to discuss the matter with Judge Finney and see what may be done in this regard.

As you have noted from a clipping which I sent in the other day, Directors DuBois and Blair were defeated at the general district election held February 1. They were strong supporters of Mark Rose, but the campaign issue which seemed to have ousted them was that they were not doing their best to bring about construction of the All-American Canal. The press states that a campaign is now under way to recall Directors Aten and Adams, on the claim that they too are hindering consummation of the All-American Canal deal.

Sincerely yours,

RICHARD J. COFFEY,
District Counsel.

APPENDIX C

February 16, 1933

Memorandum for Mr. Dent

I agree with the views expressed in your memorandum of February 7 regarding the case of *Charles Malan* v. *Imperial Irrigation District et al.* Will you be good enough to have a letter from the Secretary to the Board prepared along those lines?

NORTHCUTT ELY.

APPENDIX D

Item No. 8 posed by Richard J. Coffey for consideration in connection with the Imperial All-American Canal contract (no date):

8. Reclamation laws restrict individual holdings to 160 acres. How does this affect the District.

Response No. 8 by Northcutt Ely to Item No. 8, November 4, 1930:

8. The Reclamation Law's limitation of 160 acres to a particular owner presents a serious problem, in view of the fact that this, being an existing project, includes many farms with larger area. I see nothing to do but enforce it unless the Imperial Irrigation District can get new legislation. In any event, enforcement of this requirement would undoubtedly have a salutary effect on suspected speculative activities in that locality.

APPENDIX E

February 24, 1933

Imperial Irrigation District,
El Centro, California

Gentlemen:

Information at hand indicates that in connection with the contract with your district signed by me on behalf of the United States under date of December 1, 1932, some question has been raised concerning the maximum area of land in single ownership that may be irrigated from the proposed All-American Canal. My attention has been specifically called to the suit now pending in the Superior Court of Imperial County, California entitled *Charles Malan* v. *Imperial Irrigation District et al.* Among other things the complaint in this case contains the following allegation:

> And it is further provided by the reclamation law of the United States that water shall not be delivered from any canal so constructed by the Secretary of the Interior under the said reclamation law to any landowner owning more than 160 acres of land.

The foregoing is an inaccurate statement of the reclamation law in this respect. Presumably this allegation is intended to refer to section 5 of the Reclamation Act of June 17, 1902, which reads in part as follows:

> No right to the use of water for land in private ownership shall be *sold* for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. (Italics supplied).

It will be noted that while the reclamation law provides that no water shall be *sold* for a tract of land in excess

of 160 acres in single ownership, it does not provide, as alleged, that no water shall be delivered from a canal constructed by the Government to any tract exceeding 160 acres in area.

The All-American Canal contract with the Imperial Irrigation District does not provide for the sale of storage water for use in the Imperial and Coachella Valleys. The contract, in article 17, provides merely for the delivery of water for use in these valleys through the works to be constructed by the United States. No charge whatever is made for the water so to be delivered, and under the provisions of the Boulder Canyon Project Act no such charge can legally be made. From section 1 of this act for convenient reference the following is quoted:

> * * * *Provided, however,* That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys.

Early in the negotiations connected with the All-American Canal contract the question was raised regarding whether and to what extent the 160-acre limitation is applicable to lands to be irrigated from this canal. Upon careful consideration the view was reached that this limitation does not apply to lands now cultivated and having a present water right. These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned. Congress evidently recognized that these lands had a vested right when the provision was inserted that no charge shall be made for the storage, use, or delivery of water to be furnished these areas.

In connection with the activities of the Bureau of Reclamation it has been held that the provisions of section 5 of the Reclamation Act restricting the sale of a right to use water for land in private ownership to not more than 160 acres will not prevent the recognition of a vested water right for a larger area, and protection of the same by allowing the continued flowage of the water covered

by the right through the works constructed by the Government. (*Opinion of Assistant Attorney General,* 34 L.D. 351 (1906); *Anna M. Wright,* 40 L.D. 116 (1911).) On many projects it has been the practice to recognize vested rights in single ownership in excess of 160 acres and to deliver the water necessary to satisfy such rights through works constructed by and at the expense of the Government. This is true of the Newlands project, the North Platte project, the Umatilla project, and others.

The provision quoted from section 5 of the Reclamation Act relates to land in private ownership. This of course would not apply to the tributary public lands to be included within the boundaries of the district. While this particular provision would not be applicable to the public lands, they would be governed by section 4 of the reclamation act and other provisions which limit the area of public lands that may be entered to a farm unit required for the support of a family. This area will be such as may be fixed by the Secretary, consisting of not less than 10 nor more than 160 acres. (Section 9 of the Boulder Canyon Act and act of June 27, 1906, 34 Stat. 519.)

The foregoing has been long settled by decisions of the Department and by the practice in carrying such decisions into effect.

Sincerely yours,

RAY LYMAN WILBUR,
Secretary.

APPENDIX F

March 1, 1933

Richard J. Coffey, Esquire
608 Grant Building
Los Angeles, Cal.

Dear Mr. Coffey:

In your telegram of February 28 from Phoenix relating to the All-American Canal contract you requested that Mr. Childers be furnished with a certified copy of the Department's ruling on the 160-acre limitation. When your telegram was sent you no doubt assumed that this ruling would take the form of a formal decision. This, however, is not the case. It was decided that the matter should be passed upon in a letter addressed by the Secretary to the Imperial Irrigation District. This letter was dated February 24 and I understand the original has been forwarded by Messrs. Du Bois and Dowd to Mr. Childers. If the letter is to be used in the case under the well-known rule a certified copy could not be used until satisfactory explanation is made of failure to produce the original. A certified copy, therefore, presumably, would serve no useful purpose and accordingly is not being furnished.

Messrs. Du Bois and Dowd were in the office this morning and exhibited a telegram received by them from Mr. Childers, who in his telegram indicated that the situation is not fully met in that the discussion relates to the 160-acre limitation in the Reclamation Act, whereas they are apprehensive concerning the act of May 25, 1926, presumably section 46. You will recall that this is a matter which was very extensively discussed. You and I were of the opinion that some specific provision should be inserted regarding this acreage limitation and the original draft of contract so provided. However, representatives of the district entertained the fear that should a specific provision be inserted in the contract it would only be confusing and make the ratification by the landowners more difficult. In my view the same principle discussed in the Secretary's letter of February 24, based upon section 5

of the Reclamation Act, involves precisely that contained in section 46 of the act of May 25, 1926. The latter act merely ties up with and emphasizes what has always been the law in this respect.

The Secretary's letter was directed to the specific allegations in the complaint, which, so far as could be ascertained, had no direct reference to the act of May 25, 1926. I assume, however, that regardless of the allegations in the complaint, Mr. Childers is apprehensive that argument may be submitted based upon the 1926 act. If this is done it seems to me the defense would necessarily be based upon the propositions, first, that the All-American Canal work constitutes a special project specifically authorized by the Boulder Canyon Project Act and that this stands upon a basis quite different from the ordinary conception of a project. The second proposition is that the acreage limitation in the reclamation law (including section 46 of the act of May 25, 1926) does not apply to the lands having a vested right. This is the ground upon which you and I with reluctance agreed to elimination of the specific provision regarding acreage limitation.

Section 14 of the Boulder Canyon Project Act provides that it shall be deemed a supplement to the reclamation law, which shall govern the construction, operation and maintenance of the works authorized except as otherwise provided in that act. The specific provisions of the Boulder Canyon Project Act are therefore controlling. Section 4(b) of this act provides that contracts for repayment of costs shall be made before any money is appropriated or construction started. Section 46 of the act of May 25, 1926, contains an entirely different provision in this respect. This section does not require a contract in advance of appropriation of money or construction but does require a contract of the character described before water is delivered. Section 46 is of general application and of course contemplates a case where a project is being constructed from which a new and complete water right will be sold and where a distribution system is constructed and water deliveries made through it. The special conditions in the Imperial and Coachella Valleys were known to Congress, and I believe some consideration was given

to incorporating a special provision regarding the acreage limitation, though my memory in this respect is not entirely clear. Mr. Childers probably may recall what was contemplated and the reasons for no specific provision being inserted in this respect.

I hope the outcome of litigation will be satisfactory.

Sincerely Yours,

PORTER W. DENT.

APPENDIX G

Testimony of William E. Warne, Assistant Commissioner of Reclamation, during Hearing on H. R. 3961 before a Subcommittee of the Senate Committee on Commerce, 78th Cong., 2d Sess. 599, 764 (1944):

Representative Elliott. Why was the limitation lifted in the southern part of California down in the Imperial Valley? Why was that 160-acre limitation lifted? That applied there, just the same as it did elsewhere.

Mr. Warne. No, there was never a 160-acre limitation applied to the Imperial Valley.

Representative Elliott. There weren't any uniform water districts until that was developed, were there?

Mr. Warne. The irrigation district has been in existence much longer than the Boulder Canyon project dam.

Representative Elliott. But I say, was it not a matter of fact that they would not sign that water district until that limitation was taken off?

Mr. Warne. The limitation was never applied under the law to the Imperial Valley, except as a matter of new lands —

* * *

Mr. Warne. Yesterday, I indicated the development of the lands of the Imperial irrigation district [sic] from the Reclamation Act. There is, however, a letter from Ray Lyman Wilbur, Secretary of the Interior, dated February 24, 1933, addressed to the Imperial Irrigation District, El Centro, California, which I would like to submit for the record on that matter.

APPENDIX H

APPLICABILITY OF THE EXCESS LAND PROVISIONS OF THE FEDERAL RECLAMATION LAW TO THE BOULDER CANYON PROJECT ACT

FEDERAL RECLAMATION LAW — BOULDER CANYON PROJECT ACT — APPLICABILITY OF THE EXCESS LAND PROVISIONS OF THE FEDERAL RECLAMATION LAW TO COACHELLA VALLEY COUNTY WATER DISTRICT LANDS.

Section 14 of the Boulder Canyon Project Act (45 Stat 1065; 43 U.S.C. sec. 617m) declares that statute to be a supplement to the Federal reclamation law and thereby carries into operation as to lands irrigated under authority of the former act the excess land provisions contained in the latter legislation.

The Coachella Valley County Water District lands are subject to the excess-land provisions of the Federal reclamation law.

M-33902

May 31, 1945

The Honorable the Secretary of the Interior.

My dear Mr. Secretary:

Reference is made to Commissioner Bashore's memorandum to you, dated December 15, 1944, in which he recommends that my opinion be obtained on the question of the general applicability of the excess land provisions of the Federal reclamation law to the Coachella Valley County Water District lands in California.

This question arises in connection with a proposed contract between the United States and the Coachella Valley County Water District to provide for the construction of a new distribution system to furnish irrigation water, and to cover repayment of the increased costs of the All-American Canal, and appurtenances. Previously,

the construction of the All-American Canal, for the purpose, *inter alia,* of supplying irrigable water to the Coachella Valley, was undertaken pursuant to a contract entered between the United States and the Coachella Valley County Water District on October 15, 1934, contract symbol Ilr-781. This contract was made pursuant to the act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory and supplementary thereto, commonly known and referred to as the Federal reclamation law, and particularly pursuant to the act of December 21, 1928 (45 Stat. 1057, 43 U.S.C. sec. 617), designated as the Boulder Canyon Project Act. The question whether the general excess land provisions which are part of the Federal reclamation law, apply to the Coachella Valley Water District lands, depends on the construction and the interpretation of these statutes.

It is my opinion that the excess land provisions of the Federal reclamation law apply to the Coachella Valley County Water District lands and, accordingly, these provisions should be incorporated in the contracts presently under consideration.

The Federal reclamation law is contained in the Reclamation Act of June 17, 1902 (32 Stat. 388), which, together with acts amendatory and supplementary thereto, forms a complete legislative pattern in the field. The Supreme Court describes this type of legislation succinctly in *United States* v. *Barnes,* 222 U.S. 513, 520 (1912):[1]

> Much of our national legislation is embodied in codes, or systematic collections of general rules, each dealing in a comprehensive way with some general subject, such as the customs, internal revenue, public lands, Indians, and patents for inventions; and it is the settled rule of decision in this court that where there is subsequent legislation upon such a subject it carries with it an

1. This case held that certain procedures set out in section 3177 of the Revised Statutes, providing for the enforcement of the internal revenue laws, applied to the collection or enforcement of the specific tax imposed on oleomargarine by the act of August 2, 1886, c. 840, 24 Stat. 209.

> implication that *the general rules are not superseded, but are to be applied in its enforcement, save as the contrary clearly appears.* * * * (Italics supplied.)

Congress has followed precisely this type of legislative policy in enacting the Federal reclamation law.

The excess land provisions of general applicability in this law are the following:

The Reclamation Act of June 17, 1902 (32 Stat. 388, 389, 43 U.S.C. sec. 431);

Section 46 of the Omnibus Adjustment Act of May 25, 1926 (44 Stat. 636, 649, 43 U.S.C. sec. 423(e));

The Warren Act of February 21, 1911 (36 Stat. 925, 926, 43 U.S.C. secs. 523, 524);

The act of August 9, 1912 (37 Stat. 265, 266, 43 U.S.C. secs. 543, 544;

The Reclamation Extension Act of August 13, 1914 (38 Stat. 686, 689, 43 U.S.C. sec. 418).

Since, in the opinion of the Bureau of Reclamation, "the excess land provisions of section 46 of the Omnibus Adjustment Act seem to be applicable to contracts made with the Coachella District" (see copy of undated letter attached from the Acting Commissioner to the Regional Director, Boulder City, Nevada), these provisions will be used, for illustrative purposes only, of this type of statute:

> No water shall be *delivered* upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district * * * organized under State law providing for payment by the district * * * of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States * * * Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner

in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior; * * * (Italics supplied.)

The language used in the other statutes listed is similar. As will be considered presently, section 5 of the Reclamation Act employs the term "sold" in connection with water rights, in contrast to the term "delivered" in the Omnibus Adjustment Act.

Generally speaking, these excess land provisions represent a firmly established, time-honored, and sound public policy which seeks to achieve the twofold purpose of preventing speculation and of spreading the benefits of a reclamation project among the larger group of smaller landowners rather than confining those benefits to the relatively smaller group of large landowners. These excess land provisions are of general applicability to all reclamation projects in the 17 States enumerated in section 1 of the Reclamation Act of 1902, as amended.

Whenever these general excess land provisions did not fit the special circumstances of a project, or were found not to be adequate enough to check speculation, special excess land provisions were enacted by Congress, applicable only to specific projects. Examples of this type of legislation are:

Interior Department Appropriation Act of May 10, 1926[2] (44 Stat. 453, 465);

2. This act contains the 160-acre limitation but provides the manner, peculiar to the statute, in which excess lands may be conveyed to the United States.

Columbia Basin Antispeculation Act of May 27, 1937[3] (50 Stat. 208), as amended by the

Columbia Basin project Act of March 10, 1943[4] (47 Stat. 14, 16 U.S.C.A. App., sec. 835).

Furthermore, Congress has waived the excess land provisions of the Federal reclamation law, with regard to two projects, in view of the peculiar circumstances involved which threatened to make these projects economically unsound:

Act of June 16, 1938 (52 Stat. 764, 43 U.S.C. sec. 386), with respect to the Colorado-Big Thompson project:

Act of November 29, 1940 (54 Stat. 1219), with respect to the Washoe County Water Conservation District, Truckee storage project, and the Pershing County Water Conservation District, both in Nevada.

In the act of June 16, 1938, *supra,* the language reads:

The excess land provisions of the Federal reclamation laws shall not be applicable to lands which on June 16, 1938, had an irrigation water supply from sources other than a Federal reclamation project and which will receive a supplemental supply from the Colorado-Big Thompson project.

3. This statute contains the following proviso: "That every such contract with any district shall further require that all irrigable land held in private ownership by any one owner in excess of *forty* irrigable acres * * * shall be designated as excess land and as such shall not be entitled to receive water from said project." (Italics supplied.)

4. The limitation here is to *farm* units containing not less than 10 nor more than 160 acres.

The exclusion is equally positive in the act of November 29, 1940, *supra*.[5]

The existence of the two foregoing types of statutes is of tremendous importance in the instant situation and has a direct bearing on the problem before me. Congress in enacting them has shown clearly that the excess land provisions are the heart of the reclamation law. Where such provisions are not sufficiently drastic, Congress has enacted a special excess land law designed to meet the particular situation, as in the Columbia Basin Antispeculation Act. But where reasons of policy militate against the application of the excess land provisions, Congress provides express exemption, as in the Colorado-Big Thompson project.

When the pertinent parts of the Boulder Canyon Project Act are analyzed, it becomes apparent that Congress incorporated therein neither special excess land provisions nor exemption from the excess land provisions generally.[6] Instead, it showed clearly that it intended these provisions

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5. "That the excess land provisions of the Federal reclamation laws shall not be applicable to land in the Washoe County Water Conservation District, Nevada. Irrigated from the Boca Reservoir, Truckee River storage project, Nevada, nor to the Pershing County Water Conservation District, Nevada, irrigated from the Humboldt River Reservoir, and the Secretary of the Interior is authorized to enter into a contract with said district, amending, in accordance with this Act, the contract of December 18, 1936, between the United States and the Washoe County Water Conservation District, and the contract of October 1, 1934, between the United States and the Pershing County Water Conservation District."

6. A 160-acre limitation on lands for *homesteads* within the project is expressly stated in section 9 of the Boulder Canyon Act, as follows: "That all lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry. Thereafter, at the direction of the Secretary of the Interior, such lands shall be opened for entry, in tracts varying in size but not exceeding one hundred and sixty acres, as may be determined by the Secretary of the Interior, in accordance with the provisions of the reclamation law * * *."

to be applicable to irrigable lands within the project. Section 14 reads:

> This Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided.

Section 12, which is definitive, reads in part:

> * * * "Reclamation law" as used in this Act shall be understood to mean that certain Act of the Congress of the United States approved June 17, 1902, entitled "An Act appropriating the receipts from the sale and disposal of public land in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," and the Acts amendatory thereof and supplemental thereto. * * *

These sections will now be analyzed in the light of the general structure of the Boulder Canyon Act, its relationship to the reclamation law, its legislative history, and the few court decisions which have endeavored to interpret it.

When Congress in section 14 made the Boulder Canyon Act "a supplement to the reclamation law," it incorporated into the former statute the 160-acre limitation of the act of June 17, 1902. Webster defines the word "supplement" as "that which completes, or makes addition to, something already organized, arranged, or set apart." (Webster's New International Dictionary, First Edition, 2083.) Thus, the word "supplement," as used in the Boulder Canyon Act, means an addition to legislative enactments already extisting.

With the exception of one unpublished decision by an inferior State court in California — which will be analyzed in detail subsequently — the only case found in which the relationship between the Boulder Canyon Act and the reclamation law was considered is *Six Companies, Inc.* v. *DeVinney*, 2 F. Supp. 693 (D.C. Nev. 1933).

The legal problem in this case may be stated simply. The Six Companies, Incorporated, sought to enjoin a county

assessor in Nevada from collecting State taxes on its personal property and from demanding the payment of poll taxes from its employees. The plaintiff's principal contention for avoiding tax liability was that all of its property and the homes of its employees were inside the Boulder Canyon Project Federal *Reservation,* to which territory the State of Nevada was alleged to have ceded jurisdiction.

In dismissing the bill, the Federal District Court for Nevada observed, in part:

> The statutes referred to are the Reclamation Law and the Boulder Canyon Project Act. The latter act, as before pointed out, is supplementary to the Reclamation Law, except as otherwise therein provided.
>
> * * *
>
> The Boulder Canyon Project Act clearly discloses that the dam and incidental works therein referred to are of a permanent character, and specifically provides that "the title to said dam, reservoir, plant and incidental works shall forever remain in the United States." * * * There is no specific provision in the Boulder Canyon Project Act authorizing the Secretary of the Interior to establish any reservation, and if such authority may be inferred it would be limited to the area covered by the expression last above quoted, including any additional area necessary for administrative purposes.
>
> While, "except as otherwise herein provided," the Project Act is deemed a supplement to the Reclamation Law, a reference to the latter law * * * discloses nothing which the national government might be said to intend the retention of control beyond the consummation of the purposes of the law — the reclamation by means of irrigation of portions of the arid domain. This law comprehends the acquisition by citizens of the United States of the land and water rights. The law generally comprehends that its purposes will be carried out under national direction, but, thereto, always without relinquishment of state jurisdiction. * * *
>
> *Only in the Reclamation Law is there any provision for the establishment of town sites within reclamation proj-*

> *ects or under the authority of the Bureau of Reclamation.* Sections 561-570 (43 USCA). These provisions of the law clearly indicate the intention of Congress that the towns so established will be and remain subject to local state jurisdiction, and lots therein acquired by individual residents, and parks, playgrounds, community centers, and school grounds acquired by the public. (Italics supplied).

In a word, then, the court, in order to find the answer to this question of tax liability, was required to revert to the reclamation law, of which the Boulder Canyon Act is a supplement. The answer clearly was not in the Boulder Canyon Act proper. Therefore, is it not logical to conclude that, if the provisions for the establishment of town sites carried over from the reclamation law to the Boulder Canyon Project Act, the excess-land limitation of 160 acres — one of the most basic provisions of the reclamation law[7] — carried over in like fashion?

While the following State court decision concerns the original Homestead Act and the Enlarged Homestead Act rather than the reclamation law and the Boulder Canyon Project Act, it is sufficiently in point to merit discussion:

> *First State Bank of Shelby* v. *Bottineau County Bank,* 56 Mont. 363, 185 Pac. 162 (1919).

In that case, one Charles R. Wilbur, on July 25, 1913, made final proof upon 320 acres of land which he had entered under the Enlarged Homestead Act of February 19, 1909 (35 Stat. 639). On July 30 of the same year, the Bottineau County Bank recovered judgment against Wilbur. In January 1914, Wilbur received his patent and on April 15, 1914,

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7. How thoroughly the 160-acre limitation permeates both the homestead and the reclamation laws is emphasized in 34 Stat. 116, 43 U.S.C. § 561, cited by the court, as follows: "The Secretary of the Interior may withdraw from public entry any lands needed for town-site purposes in connection with irrigation projects under the reclamation law, *not exceeding one hundred and sixty acres* in each case, and survey and subdivide the same into town lots * * *." (Italics supplied.)

he conveyed the land by warranty deed to the First State Bank of Shelby, Montana. In November 1914, the Bottineau Bank attempted to levy execution on the land in satisfaction of its judgment, whereupon the First State Bank sought to restrain the sheriff from making the levy.

The question was whether the provisions of the original Homestead Act of May 20, 1862 (12 Stat. 392), [containing a 160-acre limitation], exempting the land from the past debts of the patentee, carried over to the Enlarged Homestead Act, *supra* [containing a 320-acre limitation]. The language in the original statute provided flatly that no land acquired thereunder could "in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor." The "enlarged" statute was silent in the matter. If the provision of the original statute carried over to the latter act, the attempted levy of the Bottineau Bank was without legal sanction.

The Supreme Court of Montana so held. It reviewed in detail the history and policy of the two statutes. It then summarized the six sections of the Enlarged Homestead Act and concluded:

> * * * It will be seen at once that the Enlarged Homestead Act does not in terms change any of the provisions of the original act. The determination of the principal question before us, therefore, depends upon the proper construction of the Enlarged Homestead Act with reference to the original act.
>
> Was it intended as an independent statute, or was it meant to become a part of the original homestead act as it existed at the time this new measure went into effect? Aside from any other consideration, the bare reading of the act of 1909 would seem to be sufficient to convince one that it could not have been intended as an independent act. * * *
>
> * * *
>
> If the Enlarged Homestead Act was intended as an amendment to the prior homestead laws, then the acts are to be construed as one — as originally in the amended form. The history of this act is fairly conclusive that it

> was never intended to be construed otherwise than as a part of the original homestead law as it was then in force. Without quoting from the committee reports or the debates in the Congress, we think it is apparent from them that it was the intention of the lawmakers by this act to supplement the existing statutes — to improve the homestead laws and encourage the settlement of the vast areas of public lands in the semiarid regions, by increasing the amount of land subject to entry * * *
>
> A supplemental act is one designed to improve an existing statute, by adding something thereto without changing the original text * * *. Supplemental statutes include every species of amendatory legislation which goes to complete a legislative scheme * * *.
>
> *Our conclusion is that the Enlarged Homestead Act is merely supplementary to the original homestead law, and is to be construed as a part of it. It follows that land acquired under it becomes subject to the provisions of section 2296 of the United States Revised Statutes * * * and that the land in controversy in this action could not in any event become liable to the satisfaction of any debt contracted by Wilbur prior to the date his patent was issued.* (Italics supplied.)

The answer to the question in the instant case is contained in the italic lines from the opinion of the Montana Supreme Court. If anything, our case is stronger. Section 14 of the Boulder Canyon Project Act makes that statute "a supplement to the reclamation law." There was no such express statutory connection between the original Homestead Act and the Enlarged Homestead Act. Yet the court found such a connection, even in the absence of express language, and enforced a limitation contained in the original act against land acquired under the supplemental act.[8]

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8. There are many cases which discuss the meaning of the word "supplement" in statutory construction. The prevailing opinion clearly is that the term signifies something which adds to, or completes, or extends that which is already in existence, without changing or modifying the original. *McCleary v. Babcock*, 169 Ind. 228, 82 N.E. 453 (1907); *Lost Creek School Tp. 1, Vigo Co.* v. *York*, 215 Ind. 636, 21 N.E. 2d 58, 60 (1939). See also

The Montana Supreme Court had a clear precedent for its decision. Three years earlier, Federal Judge Bourquin had so held in a bankruptcy case. *In re Auge,* 238 Fed. 621 (D.C.D. Mont. 1916). On that occasion the court observed:

> The bankrupt's contention that all said land is exempt is based on section 2296, R.S. * * * which reads:
>
> "No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefore."
>
> The chapter referred to is that of the federal original homestead law, providing for entries of 160 acres or less. Later homestead enactments * * * permit entries for as much as 320 acres — enlarged homesteads — of public lands of certain quality and subject to somewhat different conditions. *These latter are but additions to and amendments of the original law, and upon settled principles all form a whole, to be taken and read together as though the later enactments were part of the original law from the beginning, so as the protection extended by section 2296 is concerned.* Said section provides protection; other sections define the area protected. Changes in the latter affect not the former. Hence enlarged homesteads are "lands acquired under the provisions of this chapter," within section 2296, and are entitled to its protection, even as lesser or ordinary homesteads are. (Italics supplied.)

Even in the absence of the specific provision of section 14 of the Boulder Canyon Project Act, the general structure of this statute reveals that it was not meant to exist independently but rather as a part of the legislative scheme embodied in the Federal reclamation law. For instance, section 1 contains the authorization for the Secretary of the Interior to construct the All-American Canal. The act specifically

Loomis v. *Runge,* 66 Fed. 856, 859 (C.C.A. 5th, 1895); *Swanson* v. *State,* 132 Neb. 82, 271 N.W. 264, 268 (1937); *Edwards* v. *Stein,* 94 N.J. Eq. 251, 119, Atl. 504- 507 (1923); *Bradley & Currier Co.* v. *Loring,* 54 N.J.L. 227, 23 Atl. 685, 686 (1892); *Rahway Savings Institution* v. *City of Rahway,* 53 N.J.L. 48, 20 Atl. 756, 757 (1890).

provides "the expenditures for said main canal and appurtenant structures to be reimbursable, as provided in the reclamation law * * *" In order to determine the extent and mode of reimbursement, the pertinent provisions of the Federal reclamation law must be consulted. Other reference to the Federal reclamation law are found in sections 4(b),[9] section 5,[10] and section 9[11] of the Boulder Canyon Project Act. "It cannot be said that an act so absolutely dependent upon prior acts is an independent statute." *First State Bank* v. *Bottineau County Bank, supra,* at 164. Thus the intent of Congress, to make the Boulder Canyon Project Act part of the legislative pattern of the Federal reclamation laws, is clearly manifest.

9. "Sec. 4(b) * * * Before any money is appropriated for the construction of said main canal and appurtenant structures to connect the Laguna Dam with the Imperial and Coachella Valleys in California, or any construction work is done upon said canal or contracted for, the Secretary of the Interior shall make provision for revenues, by contract or otherwise, adequate in his judgment to insure payment of all expenses of construction, operation, and maintenance of said main canal and appurtenant structures *in the manner provided in the reclamation law.*" (Italics supplied.)

10. "Sec. 5. That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe to contract for the storage of water in said reservoir and for the delivery thereof * * * upon charges that will provide revenue which, in addition to other revenue accruing *under the reclamation law* and under this Act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States * * *." (Italics supplied.)

11. "Sec. 9. That all lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry. Thereafter, at the direction of the Secretary of the Interior, such lands shall be opened for entry, in tracts varying in size but not exceeding one hundred and sixty acres, as may be determined by the Secretary of the Interior, *in accordance with the provisions of the reclamation law* * * *." (Italics supplied.)

Furthermore, there is no language in the Boulder Canyon Project Act which expressly and directly repeals the excess-land provisions of the reclamation law. As laws are presumed to be enacted with deliberation and with a full knowledge of all existing statutes on the same subject, it is only reasonable to conclude that Congress, in passing the Boulder Canyon Project Act, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two should prove irreconcilable. *United States v. Noce,* 268 U.S. 613 (1925);[12] *United States* v. *Greathouse,* 166 U.S. 601, 605 (1897);[13] *Frost* v. *Wenie,* 157 U.S. 46 (1895);[14] *Henderson's Tobacco,* 78 U.S. 652 (11 Wall.) (1870).[15] The rule has

12. This case held that a provision in section 11 of the act of May 18, 1920 (41 Stat. 601), reading, *"That hereafter longevity pay for officers in the Army, Navy, Marine Corps, Coast Guard, Public Health Service, and Coast and Geodetic Survey shall be based on the total of all service in any or all of said services,"* did not repeal section 6 of the act of October 24, 1912 (37 Stat. 569, 594), providing "That hereafter the service of a cadet who may hereafter be appointed to the United States Military Academy, or to the Naval Academy, shall not be counted in computing for any purpose the length of service of any officer of the Army."

13. The proviso in the act of March 3, 1887, 24 Stat. 505, known as the Tucker Act, * * * "That no suit against the Government of the United States shall be allowed under this act unless the same shall have been brought within six years after the right accrued for which the claim is made," did not repeal so much of section 1069 of the Revised Statutes as provides, "that the claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; * * *"

14. This decision held that Congress, by enacting the act of December 15, 1880 (21 Stat. 311), opening for settlement certain lands in Kansas within the abandoned Fort Dodge military reservation, "in the absence of express words of repeal," did not impair the rights guaranteed to the Osage Indians by the treaty of 1865.

been well stated in *Red Rock* v. *Henry,* 106 U.S. 596 (1882),[16] at page 601:

> * * * when an affirmative statute contains no expression of a purpose to repeal a prior law, it does not repeal it unless the two acts are in irreconcilable conflict, or unless the later statute covers the whole ground occupied by the earlier and is clearly intended as a substitute for it, and the intention of the legislature to repeal must be clear and manifest.

Repeals by implication are not favored, and it will not be presumed that, by a subsequent enactment, the legislature intended to repeal former laws upon the general subject, and more especially in a case such as this where the existing reclamation law is referred to directly. See decisions cited in notes 11 through 15 and *State* v. *Bowker,* 63 Mont. 6, 205 Pac. 961, 963 (1922);[17] *Jobb* v. *Meagher County,* 20 Mont. 424, 51 Pac. 1034 (1898).[18]

15. The doctrine of repeal by implication was repudiated. The case held that the act of July 20, 1868, imposing taxes on distilled spirits and tobacco, did not repeal the proviso to section 25 of the Internal Revenue Act of March 2, 1867, which limited to 20 days the time for commencing proceedings to enforce forfeitures.

16. The Minnesota statutes in question both concerned municipal financing.

17. This case, which held that the procedure provided by a State prohibition statute, enacted in 1921, did not by implication supersede procedures established under a general statute, enacted in 1917, contains a comprehensive discussion of the subject. The Montana Supreme Court said: "Repeals by implication are not favored, and it will not be presumed that by a subsequent enactment the Legislature intended to repeal former laws upon the subject not mentioned * * * *and more especially so in the case before us where the existing law appears to have been under consideration to the extent of direct reference thereto, both in the title and in the repealing clause.*" (Italics supplied.)

18. Two Montana statutes concerning the appointment of deputy sheriffs were involved. The court refused to countenance any idea of repeal by implication.

Nothing in the legislative history of the Boulder Canyon Project Act indicates that it was the intention of Congress to abdicate the public policy embodied in the excess-land provisions of the reclamation law and thus open the door to the vicious real estate speculation which was all ready to take advantage of the Boulder Canyon project lands. Congress was fully aware of this danger, and it was commonly assumed by Congress that the Boulder Canyon Project Act was subject to the excess-land provisions.[19]

In the light of the foregoing authorities, it is my conclusion that the Boulder Canyon Project Act is supplementary to the reclamation law, except as otherwise therein provided, and, accordingly, the excess-land provisions are applicable to the Coachella Valley County Water District lands.

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19. See, for example, the following discussion in the House of Representatives [69 Cong. Rec. 9626 (1928)].

"Mr. MORTON D. HULL. The language of the bill is not clear to me.

"Mr. DOUGLAS of Arizona. The bill authorizes the Secretary of the Interior to construct a canal to the Imperial and Coachella Valleys. The appropriation bill in specific terms is only for the all-American canal to the Imperial Valley. If the Coachella Valley, where there are public lands, and if the areas in the vicinity of the Imperial Valley are to be brought in under cultivation, then the Congress must appropriate another $18,000,000.

"Mr. SWING. Mr. Chairman, if the gentleman will permit, I think perhaps the gentleman from Illinois [Mr. Morton D. Hull] is referring to the limitation on the area that one person can hold after the canal is built, requiring that any large holding must be broken up, and if it is not broken up, it must be turned over to the Secretary of the Interior, who may sell it at an appraised price, so that no one will hold over a maximum of 160 acres.

"Mr. DOUGLAS of Arizona. That is in the bill. I thank the gentleman. *In this connection I might state also that the Imperial Valley and southern California is deluged with advertisements now 'Buy land in Imperial Valley now; speculate on Boulder Dam.'*" (Italics supplied.)

It now becomes necessary to examine and refute the principal arguments against the foregoing conclusion.

It has been contended, for example, that in view of the language of section 14 of the Boulder Canyon Project Act the reclamation law applies only to the "construction, operation, and management of the works." This contention must, by necessity, be based either on the doctrine of *ejusdem generis* or on the doctrine of *expressio unius est exclusio alterius.* These doctrines belong more properly in the field of contract construction than statutory construction. The courts have repeatedly held that these doctrines are not of universal application, but serve only as an aid in the ascertainment of the meaning of the law, and must yield whenever a contrary intention of the lawmaker is apparent. *Buringer* v. *Philippine Islands,* 277 U.S. 189, 206 (1928); *Helvering* v. *Stockholm Enskilda Bank,* 293 U.S. 84, 89 (1934). The contrary intent of Congress is apparent in section 14 of the Boulder Canyon Project Act.

The unreported decision of the Superior Court for Imperial County, California in *Hewes* v. *All Persons* (May 24, 1932), has been cited as precedent for the nonapplicability of the excess-land provisions. The Superior Court held that the contract between the United States and the Imperial Irrigation District, dated December 1, 1932, providing for the construction of the All-American Canal, and all proceedings leading to its execution, are valid in all particulars. The jurisdiction of the court was invoked pursuant to the following provision of the contract:

> Article 31. The execution of this contract by the District shall be authorized by the qualified electors of the District at an election held for that purpose. Thereafter, without delay, the District shall prosecute to judgment proceedings in court for a judicial confirmation of the authorization and validity of this contract. The United States shall not be in any manner bound under the terms and condition of this contract unless and until confirmatory final judgment in such proceedings shall have been rendered, including final decision, or pending appellate action if ground for appeal be laid. * * *

The court made the following finding No. 35:

That under said Contract between the United States and Imperial Irrigation District, dated the 1st day of December, 1932, the delivery of water will not be limited to 160 acres in a single ownership and that the lands of the defendant Charles Malan in excess of 160 acres will not be denied water because of the size of said ownership, and that water service to lands regardless of the size of ownership will not be in any manner affected by said contract, so far as the size of individual ownership is concerned.

The court amplified this finding in its decision as follows:

Use of Water not Limited by Reclamation Law.

Defendant Malan, the owner of 210 acres of land in Imperial Irrigation District, asserts that the contract is void because section 5 of the Reclamation Law provides that no right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres in any one landowner, thus preventing him from obtaining water for all of his land, that he will be required to pay water assessments upon all of his land but will be able to get water for only 160 acres, and that the contract takes from him, without compensation, his water right for all of his land in excess of 160 acres.

The water right of neither the defendant Malan nor of any other person in the Imperial Irrigation District may be taken by the district or by the government without compensation. Furthermore, section 5 of the Reclamation Law does not apply in these proceedings. The Boulder Canyon Project Act provides a complete scheme for the construction of the Boulder Dam, the All-American Canal, and the dam diverting water from the Colorado River into the canal. Section 1 of the Boulder Canyon Project Act provides that the expenditures for the main canal and appurtenant structures shall be "reimbursable, as provided in the Reclamation Law," and in section 4(b) it is required that before any money is appropriated for the construction of the main canal and

appurtenant structures, the secretary shall make provision for revenues adequate in his judgment to secure payment of all expenses of construction, operation, and maintenance "in the manner provided in the Reclamation Law." Section 14 provides that the Boulder Canyon Project Act "shall be deemed a supplement to the Reclamation Law, which said Reclamation Law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided." The act does not adopt the Reclamation Law or any of its provisions, except as above stated, and the authority of the secretary with reference to the delivery of water must be found in the Boulder Canyon Project Act and not in the Reclamation Law. Section 5 of the Boulder Canyon Project Act authorizes the secretary to contract for the delivery of water "under such general regulations as he may prescribe" and provides that "contracts respecting water for irrigation and domestic uses shall be for permanent service." Article 30 of the contract reads as follows: "Except as provided by the Boulder Canyon Project Act, the Reclamation Law shall govern the construction, operation and maintenance of the works to be constructed hereunder." There is nothing in the statute or in the contract limiting the acreage to which water may be sold and delivered.

The reading of Article 31 of the contract shows that the jurisdiction of the court was invoked solely "for a judicial confirmation of the authorization and validity of the contract." Since the court was not called upon to determine the applicability of section 5[20] of the Reclamation Act to the contract it thus clearly exceeded its authority. Accordingly, its finding No. 35, and that part of the opinion referring to it, must be regarded as dictum. This dictum is

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20. This section provides: "No right to the use of water for land in private ownership shall be *sold* for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made." (Italics supplied.)

narrowly confined to the question of the applicability of section 5 of the reclamation law. Even assuming for purposes of discussion that the California court might be right as to the nonapplicability of section 5, this decision completely disregards the whole legislative scheme of the Federal reclamation laws on the subject of excess-land laws, e.g., section 46 of the Omnibus Adjustment Act, *supra;* the Warren Act, *supra.*

Appeal was instituted by the Imperial Water District and by stipulation of the parties, the appeal was dismissed by the Supreme Court of California on February 26, 1934. The outcome of this action was of utmost importance to the United States because the construction of the All-American Canal was delayed because of a decision of the Comptroller General who held (A-32702, December 6, 1933) that no funds might be expended for construction until the contract had been found valid by the State court of last resort.

These circumstances furnish the background and explanation for a letter of former Secretary of the Interior, Hon. Ray Lyman Wilbur, dated February 24, 1933. In this letter the Secretary stated:

> Early in the negotiations connected with the All-American Canal contract the question was raised regarding whether and to what extent the 160-acre limitation is applicable to lands to be irrigated from this canal. Upon careful consideration the view was reached that the limitation does not apply to lands now cultivated and having a present water right. These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned. Congress evidently recognized that these lands had a vested right when the provision was inserted that no charge shall be made for the storage, use, or delivery of water to be furnished these areas.

A study of the letter reveals that it completely disregards all other excess-land provisions except section 5 of

the Reclamation Act of 1902.[21] This construction of the congressional intention is not borne out by a review of the proceedings of Congress. Senator Pittman introduced, on December 14, 1928, the following amendment:

> That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys.[22]

The following discussion ensued:

> Mr. PITTMAN.***
>
> * * *
>
> I will state that originally I entered a motion to strike out that whole proviso. However, as the representatives of Imperial Valley desired [sic.] to stay in, and are willing to limit its effects entirely to that valley, I defer to their wishes.
>
> Mr. JOHNSON. I have no objection to the amendment that is suggested.
>
> Mr. KING. Mr. President, may I inquire of the Senator from Nevada whether that is similar to the amendment which was offered yesterday? I have just entered the Chamber, and did not hear the entire statement of the Senator. The purpose, as I understand, of the amendment, is to relieve Imperial Valley from any charges whatever, except such as would be imposed under the reclamation act.
>
> Mr. PITTMAN. That is the opinion of the representatives of Imperial Valley, and that is the reason why it is put in that form. They feel that in some way that paragraph is more in harmony with the reclamation act.

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21. While this section, set out in footnote 20, *supra,* limits the *sale* of water rights to tracts of 160 acres or less, section 46 of the Omnibus Adjustment Act, set out previously in the text of this opinion, uses the term "delivered" instead of "sold."

22. 70 Cong. Rec. 575 (1928); the amendment was accepted and appears in exactly the same wording as the last proviso of § 1 of the Boulder Canyon Project Act.

There is some doubt in my mind as to that; but, as they are willing to limit its effect entirely to their own valley, it is not a matter of such great concern to me.

Mr. KING. Let me ask the Senator, in my own time, if he does not have the time, whether in his opinion the new lands which it is expected will be brought under cultivation in the Coachella or Imperial Valleys ought to be exempted from contribution to the construction of the dam?

Mr. PITTMAN. There is no charge in this bill whatever on the Imperial Valley land or the Coachella Valley land for the construction of the dam or power house.

Mr. KING. I know that, but inquire whether the Senator believes the users of water should exempt [sic.]. Under the reclamation projects, as the Senator knows, those who make contracts for the purchase of land or the purchase of water are required to pay for both water and the construction of canals and dams, and the amount which they pay includes all of the expenses of the Government. Here we are asking the settlers to pay only for the canal, and exempting them from paying anything whatever toward the construction of the dam.

Mr. PITTMAN. I admit this is an exception to the practice under the reclamation act in that it relieves this land from the payment of any part of the cost of the dam. It simply limits it to the cost of the canal. In this particular case the Senate has allocated $25,000,000 toward the cost of the dam. It is true that the $25,000,000 must be paid back, but the payment may be postponed until the end of the period of amortization. I think that in view of the fact that this dam has to be built for flood-control purposes, and in view of such allocation, we should exempt those lands in Imperial Valley from the payment of any part of the cost of that dam.

Mr. KING. Then it is apparent that the residents of Imperial Valley will have the benefits of flood control, storage water, the certainty of getting an equated flow, and will be required to pay for nothing except the cost of the All-American canal.

Mr. PITTMAN. That is the fact; but I think the circumstances warrant it.

Mr. KING. Does the Senator think there should be no distinction between those who have vested rights, who have already appropriated water in the Imperial Valley, and those who have no vested rights, and have never appropriated any water?

Mr. PITTMAN. No; I do not think we can have a successful reclamation project if we attempt to draw that distinction, because undoubtedly even those with the vested rights will have to pay a part of this cost if the Government is to be repaid —

Although the language of the letter of Secretary Wilbur seems broad enough to include the Coachella Valley district lands, the letter was clearly intended only to apply to the Imperial Irrigation lands. It apparently asumes that all privately owned land in the District was under irrigation and has a vested water right. Nothing in the files indicates whether such is the factual situation, and there is strong indication that the Coachella Valley lands are to a very large degree as yet not irrigated.

Furthermore, an examination of the files reveals that the letter of the former Secretary was written at the request of counsel of the Imperial District who wanted a ruling on the application of the excess land provisions "provided, that such ruling would be that the 160-acre limitation did not apply." Purposely, the letter of Secretary Wilbur never took the form of a formal decision. It was written solely for the purpose of giving partisan help to the Imperial Water District, as the delay of the final confirmation of the contract held up the construction of the All-American Canal. Besides, the time of the Hoover Administration was near its close. In less than ten days after the date of Secretary Wilbur's letter (February 24, 1933), President Roosevelt was inaugurated.

In summary, then, I reach the conclusion that in view of section 14 of the Boulder Canyon Project Act, which makes that act supplementary to the Federal reclamation law, the excess-land provisions contained therein are car-

ried into operation with respect to the Coachella Valley water lands and should be incorporated in the contracts presently under consideration.

Respectfully,

FOWLER HARPER,
Solicitor.

Approved: May 31, 1945
HAROLD L. ICKES,
Secretary of the Interior.

APPENDIX I

Mr. H. C. HERMANN
Department Quartermaster Adjutant
Veterans of Foreign Wars
107 Veterans Building
San Francisco 2, California

April 27, 1948

MY DEAR MR. HERMANN:

Pursuant to advice in our letter of March 18, the questions which you asked in your letter of February 27 concerning the Imperial Irrigation District have been thoroughly considered in the Bureau of Reclamation.

As you have suggested in your letter, Secretary Wilbur on February 24, 1933, advised the Imperial Irrigation District to the effect that, in the factual situation presented there, in so far as described in that letter, the 160-acre limitation of the Federal Reclamation Law would not result in restrictions of the acreage of land in one ownership eligible to receive water from the project. As you have also observed, the Solicitor for the Department on May 31, 1945, considered the applicability of the acreage restrictions under the Boulder Canyon Project Act with reference to the Coachella Valley County Water District. In that opinion the Solicitor made it clear that, based upon the situation placed before him with respect to the Coachella Valley County Water District lands, the acreage limitations

of the Federal Reclamation Law are applicable. You will understand, I think, that even though both of the irrigation districts referred to are served from the All-American Canal under the same statute, the Solicitor's opinion, approved by the Department, was only with respect to the Coachella case. Therefore, simply as a matter of technical ruling, the approved opinion did not itself affect the situation with respect to the Imperial case.

Concerning, however, the substantive questions which relate alike to both districts, we have concluded that inasmuch as the Secretary of the Interior then charged with the administration of law construed the acreage limitation as not being applicable to lands of the Imperial Irrigation District under the facts as he then understood them, and it being clear that the then owners and subsequent purchasers of irrigable lands in the Imperial Irrigation District were entitled to rely upon advice from the Secretary and thus establish an economy in the district consistently with that advice, they should not now be abruptly advised that the economy of the project is to be changed under a contrary ruling of the present officer charged with the administration of the law.

To the extent, therefore, that the actual fact situation with respect to lands and water rights may be identical in the two districts in question, and to the extent that the advice furnished in the Coachella case would otherwise be applicable in the Imperial case, we feel that we must allow that inconsistency, if such there be, to continue. I think that you will understand the position which the Department must take in this matter in fairness to those who have relied on its action, even though that action might now be subject to valid question.

If you have further questions in connection with these matters, please do not hesitate to advise us.

Sincerely yours,

J. A. KRUG,
Secretary of the Interior.

APPENDIX J

February 5, 1958

Hon. J. Lee Rankin
Solicitor General
Department of Justice
Washington 25, D.C.

Dear Mr. Rankin:

I have received your letter of January 24, and its enclosure, in connection with the case of *Arizona* v. *California, et al.*, No. 10 Original in the Supreme Court of the United States.

The question posed in the course of oral argument by the State of Arizona is whether the so-called 160-acre limitation of the Federal Reclamation Law is applicable to the lands of the Imperial Irrigation District. I am, of course, familiar with the views expressed by Secretary Wilbur in his letter of February 24, 1933, to the Imperial Irrigation District, and I am also familiar with the views expressed by former Solicitor Harper in his opinion M-33902, dated May 3, 1945. However, since assuming my duties as Solicitor of the Department last year, I have not had occasion to undertake a legal analysis of the respective views heretofore expressed by Secretary Wilbur and former Solicitor Harper. Whatever the conclusion might be, to my mind the time has long since passed when it is realistic and practicable to do so. My reasons for viewing the matter in this light will be briefly stated.

The water contract between the United States and the Imperial Irrigation District was executed December 1, 1932, some 25 years ago. The negotiations leading to the contract were lengthy and extensively in the public view. Except at the time of court confirmation, I am not aware of any challenge as to the legality of the contract during this entire period. Water has been delivered to the lands of Imperial District pursuant to the contract since the early 1940's. I am not aware that any administrative action has been pro-

posed or taken either by the preceding administration or by this one to recognize or enforce application of the 160 acre limitation to the lands of the Imperial Irrigation District.

At the time of court confirmation of the Imperial water contract (*Hewes* v. *All Persons* (May 24, 1933), unreported, before the Superior Court for Imperial County, California), defendant Malan, the owner of 210 acres, attacked the validity of the contract on the ground that the 160 acre limitation would prevent water delivery to all of his land. The court found the contract valid in all respects and made the following finding No. 35.

> That under said Contract between the United States and Imperial Irrigation District, dated the 1st day of December, 1932, the delivery of water will not be limited to 160 acres in a single ownership and that the lands of the defendant Charles Malan in excess of 160 acres will not be denied water because of the size of said ownership, and that water service to lands regardless of the size of ownership will not be in any manner affected by said contract, so far as the size of individual ownership is concerned.

The United States was not a party to that confirmation proceeding. Article 31 of the Imperial water contract reads as follows:

> CONTRACT TO BE AUTHORIZED BY ELECTION AND CONFIRMED BY COURT
>
> ARTICLE 31. The execution of this contract by the district shall be authorized by the qualified electors of the District at an election held for that purpose. Thereafter, without delay, the District shall prosecute to judgment proceedings in court for a judicial confirmation of the authorization and validity of this contract. The United States shall not be in any manner bound under the terms and conditions of this contract unless and until a confirmatory final judgment in such procedings shall have been rendered, including final decision, or pending appellate action if ground for appeal be laid. The District shall without delay and at its own cost and expense furnish the

United States for its files, copies of all proceedings relating to the election upon this contract and the confirmation proceedings in connection therewith, which said copies shall be properly certified by the clerk of the Court in which confirmatory judgment is obtained.

The United States acting through the then Secretary of the Interior accepted the contract as having been confirmed and acting thereon proceeded to initiate construction of the All-American Canal and engage upon a variety of transactions in reliance upon the validity of the contract. There must surely arise a point of time, again I believe long since past, when the contract in keeping with the terms of Article 31 became binding upon the United States and the District. To treat otherwise at this date could have far-reaching effect.

By letter of April 27, 1948, the Secretary of the Interior, responding to an inquiry made by the Veterans of Foreign Wars concerning the apparent inconsistency of the application of the 160 acre limitation to the lands of the Imperial Valley and to the lands of the Coachella Valley, stated in part:

> Concerning, however, the substantive questions which relate alike to both Districts, we have concluded that inasmuch as the Secretary of the Interior then charged with the administration of law construed the acreage limitation as not being applicable to lands of the Imperial Irrigation District under the facts as he then understood them, and it being clear that the then owners and subsequent purchasers of irrigable lands in the Imperial Irrigation District were entitled to rely upon advice from the Secretary and thus establish an economy in the district consistently with that advice, they should not now be abruptly advised that the economy of the project is to be changed under a contrary ruling of the present officer charged with the administration of the law.
>
> To the extent, therefore, that the actual fact situation with respect to lands and water rights may be identical in the two districts in question, and to the extent that the advice furnished in the Coachella case would otherwise

> be applicable in the Imperial case, we feel that we must allow that inconsistency, if such there be, to continue. I think that you will understand the position which the Department must take in this matter in fairness to those who have relied on its action, even though that action might now be subject to valid question.

Further, it may be significant to note that the 1932 Imperial water contract was amended in 1952 after extensive negotiation to accommodate the Imperial Dam and All-American Canal operations to the Mexican Water Treaty of 1944. The amendatory contract of 1952 in no way seeks to revive or treat with the application of the 160 acre limitation.

Quite apart from the timeliness of now probing anew the application of the 160 acre limitation, I believe there are other pertinent aspects of the matter which warrant careful consideration. I have in mind particularly the relevance of the 160-acre limitation to the primary issue of determining as between Arizona and California their respective entitlements to water, the position of the Government regarding the validity of its water contracts and perhaps the standing of Arizona to inject the question of the application of the 160 acre limitation. I shall discuss these matters briefly in the order mentioned.

Under section 4 of the Boulder Canyon Project Act and the California Self-Limitation Act, California is entitled to the beneficial use of 4,400,000 acre-feet of III(a) water, plus one-half the surplus. This has always been the view of this Department; see 54 I.D. 593 (1934). What lands that water is delivered to is a matter first, of internal California law and second, and of more importance, of contracts between the California interests and the United States. The failure of the parties, if it be a failure, to include all necessary provisions in the Imperial contract cannot operate to enlarge the Arizona entitlement. She must stand on the strength of her own title and not the weakness of her opponent's title. Accordingly, we believe the 160-acre limitation issue is not one relevant to the rights of the states under the law of the river.

In its Petition of Intervention (Paragraph XXXI, pages 27 and 28) the United States asserts that its water contracts are valid and binding and denies "each and every allegation of the parties to the cause in their respective pleadings with reference to these treaties, conventions, compacts, documents, laws and contracts which in any way contravenes, contests, or challenges the validity of them or any provision or provisions of them; * * *." As previously indicated, I believe we cannot take a different view at this time.

The water delivery contract between the United States and the State of Arizona, dated February 9, 1944, clearly recognizes the right of the United States to contract with the agencies of the State of California for the storage and delivery of water from Lake Mead. Article 7(h) of that contract reads:

> (h) Arizona recognizes the right of the United States and agencies of the State of California to contract for storage and delivery of water from Lake Mead for beneficial consumptive use in California, provided that the aggregate of all such deliveries and uses in California from the Colorado River shall not exceed the limitation of such uses in that State required by the provisions of the Boulder Canyon Project Act and agreed to by the State of California by an Act of its Legislature (Chapter 16, Statutes of California of 1929) upon which limitation the State of Arizona expressly relies.

Since the Imperial water contract was nearly 12 years old and well-known to the State of Arizona at the time the Arizona water contract was executed, it would appear reasonable to conclude that the above-quoted language was, at least so far as Arizona is concerned, a recognition of the right of a Secretary to have executed the Imperial water contract of December 1, 1932.

In keeping with your request I am attaching a copy of the document requested entitled "Land Ownership Survey on Federal Reclamation Projects." There is also attached for your information a copy of Secretary Krug's letter of

April 27, 1948, from which I have heretofore quoted. We shall be glad to discuss the subject of your inquiry if that seems desirable.

Sincerely yours,

ELMER F. BENNETT,
Solicitor.

APPENDIX K

IN THE SUPREME COURT
OF THE UNITED STATES

NO. 10 ORIGINAL

October Term 1957

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, ET AL., DEFENDANTS,

UNITED STATES OF AMERICA and STATE OF NEVADA, INTERVENERS,

STATE OF UTAH and STATE OF NEW MEXICO, IMPLEADED DEFENDANTS.

Before the Honorable Simon H. Rifkind, Special Master

MEMORANDUM IN BEHALF OF THE UNITED STATES WITH RESPECT TO RELEVANCE OF NON-COMPLIANCE WITH ACREAGE LIMITATIONS OF RECLAMATION LAW

for Imperial County, California, on July 1, 1933,[3] found and concluded that, without distinguishing between privately

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3. California Exhibit No. 207.

owned and public lands which might be opened for entry, there is no limit on the quantity of lands in single ownership which might be served with irrigation water from the All-American Canal; and that by opinion No. M-33902 dated May 31, 1945[4] the Solicitor for the Department of the Interior, with Secretarial approval, repudiated the conclusion reached in the Wilbur letter of 1933 and concluded that the acreage limitation provisions of the reclamation law were fully applicable to lands under the All-American Canal within the Coachella Valley County Water District.

But, we submit, the Special Master's disposition of the Arizona request and of the California objections thereto neither requires nor justifies a resolution of the question whether the acreage limitation provisions of the reclamation law apply to lands in the Imperial Irrigation District or the question whether the decree of *Hewes, et al.* v. *All Persons, et al.* precludes further consideration of that question. For even though an affirmative answer to the first of those questions and a negative answer to the second be assumed, the California objections to the Arizona request should nevertheless be sustained.[5] A demonstration of the reasons why this is believed to be so is the principal burden of this memorandum.

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4. Arizona Exhibit 249 for identification.

5. It is not the purpose of the United States to avoid taking a position on these questions, but simply to avoid unnecessary argument. Briefly, it may be stated that for the reasons stated in Solicitor Harper's opinion, as well as for others, no conclusion seems permissible other than that the limitations of the reclamation law upon the quantity of privately owned lands which might receive irrigation water under the All-American Canal are applicable in the Imperial Valley just as are the similar limitations relating to public lands opened for entry within the District. (See, e.g., section 9 of the Boulder Canyon Project Act, 43 U.S.C. § 617h.) Clearly, the All-American Canal is a reclamation project (36 Op. Atty. Gen. 121, 130, 138, Dec. 26, 1920), subject to all the provisions of "Reclamation law," as defined in section 12 of the Boulder Canyon Project Act (43 U.S.C. § 617k), except as such provisions are by the Project Act made inapplicable. Section 1 of the Project Act (43 U.S.C. § 617) reads "the expendi-

tures for said main canal and appurtenant structures to be reimbursable, as provided in the reclamation law." Section 14 (43 U.S.C. § 617m) is even more explicit. "This act shall be deemed a supplement to the reclamation laws, *which said reclamation laws shall govern the* construction, *operation, and management* of the works herein authorized, except as otherwise herein provided." (Italics supplied.) It is at best no more logical to argue, as the California defendants have, that the omission to include in the Project Act an express limitation with respect to lands in private ownership indicates a Congressional intent that no such limitation should apply than it is to argue that the express provision was deleted because it was thought section 14 was entirely adequate to accomplish the purpose. The express limitation with respect to public lands contained in section 9 is not inconsistent with such an assumption. For the express provision of section 9 with respect to the opening of public lands for entry made necessary the accompanying limitation on the size of the tracts. We think the reasoning whereby the conclusion of non-applicability was reached in Appendix A to the "King Report" (quoted at page 47 *et seq.* of the Brief of Imperial Irrigation District on this question) is utterly devoid of logic and of any other basis for support. Other references to the controlling effect of the provisions of reclamation law are to be found throughout the Project Act. In addition to Secretary Wilbur's failure to consider all of the possibly applicable provisions of the various supplements to the Reclamation Act of 1902, there are other inadequacies in his premises for the conclusion he stated. Among them are his assumption, without analysis, that "lands now cultivated" in the District had as against the United States vested water rights, and his assumption that those lands would receive through the works constructed by the Government only "the continued flowage of the water covered by the right * * *."

With respect to the Superior Court's findings and conclusions in *Hewes, et al.* v. *All Persons, et al.*, we shall limit our comments at this point (1) to the statement that the United States had not, and has not, consented to be sued in cases of that kind and that its officers could therefore not have submitted the United States to the jurisdiction of the Court even had they attempted to do so — which they did not, and (2) to the observation that the Superior Court's attempted determination of the applicability to lands in the District of the acreage limitation provisions went far beyond

APPENDIX L

August 7, 1961

Honorable Stewart Udall
Secretary of the Interior
Washington 25, D.C.

Dear Mr. Secretary:

I have had some complaints from Southern California that the acreage limitation provisions of the Reclamation law have not been enforced in Bureau of Reclamation Projects in the Coachella and Imperial Valleys.

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the direction of Congress "That no contract with an irrigation district under this act shall be binding on the United States *until the proceedings on the part of the district for the authorization of the execution of the contract* with the United States shall have been confirmed by decree of a court of competent jurisdiction * * *." (Act of May 15, 1922, section 1, 42 Stat. 541; 43 U.S.C. § 511. See also Act of May 25, 1926, § 46; 44 Stat. 649, 650; 43 U.S.C. § 423e.)

The question of the general applicability in California of the acreage limitation provisions of the reclamation law and the question whether the United States can be a party defendant to "validation" proceedings such as *Hewes, et al.* v. *All Persons, et al.*, are now pending before the Supreme Court of the United States in the case of *Ivanhoe Irrigation District* v. *All Persons, et al.*, 47 Cal. 2d 597, 306 P. 2d 824, 355 U.S. 803, and related cases. Although the United States did not appear in the State court proceedings in the case except as *amicus curiae* in support of the State's petition to the California Supreme Court for rehearing, it is planned that an *amicus curiae* brief will be filed with the United States Supreme Court. None of the briefs on that appeal has yet been filed. For this reason it is believed inappropriate, as well as unnecessary for the reasons stated in the text, to argue at length here the question adverted to in this footnote.

Would you kindly advise me if these areas are subject to acreage limitation provisions, and if so, the status of land ownership within them?

Sincerely yours,

CLINTON P. ANDERSON,
Chairman.

APPENDIX M

May 15, 1962

Hon. Clinton P. Anderson
Chairman, Committee on Interior and Insular Affairs
United States Senate, Washington, D.C.

Dear Mr. Chairman:

On August 7, 1961, you made inquiry as to whether lands in the Coachella and Imperial Valleys are subject to acreage limitation provisions of the Federal Reclamation laws and, if so, the status of land ownership within them. Unfortunately, your letter was misplaced.

The Coachella Valley County Water District is in compliance with the land limitation provisions of the Federal Reclamation laws. The Coachella distribution system contract of December 22, 1947, includes provisions implementing the acreage limitation provisions through recordable contracts as specified in section 46 of the Act of May 25, 1926. No acreage limitation provisions were included in the Coachella All-American Canal contract of October 15, 1934, whereby the Coachella County Water District contracted for capacity in the Imperial Dam and the All-American Canal and for the repayment of a proportionate share of the costs of those facilities. Omission of land limitation provisions in the 1934 contract was no doubt based upon a ruling by Secretary of the Interior Wilbur made in 1933 in the case of the Imperial Irrigation District. Further comment upon Secretary Wilbur's ruling is made hereafter in this letter.

In connection with negotiation of the Coachella distribution contract, the Solicitor of the Department made a thorough review of the possible applicability of land limitation provisions and in an opinion dated May 31, 1945 (copy enclosed) the Solictor held that the land limitation provisions of the Federal Reclamation laws were applicable to lands in the Coachella County Water District. Accordingly, as above indicated, land limitation provisions were included in the distribution system contract.

Currently available records indicate that of the 923 ownerships in the Coachella District larger than five acres, which comprise an aggregate total of 74,718 irrigable acres, none contain excess lands. Hence, there is no indication of violation of the acreage limitation provisions of reclamation law in the Coachella service area.

By reason of Secretary Wilbur's ruling of 1933, records have not been maintained of excess ownerships in the Imperial Irrigation District. Consequently, we are unable to advise with respect to the extent of noncompliance with excess land limitations in the Imperial District, but we would assume from general knowledge that there are considerable large holdings and that they have been increasing.

With respect to the applicability of excess land limitations to lands in the Imperial Irrigation District, as noted above, Secretary Wilbur in 1933, shortly before he left office, ruled that lands within the District did not come under the statutory restrictions. The rationale of the Solicitor's opinion of May 31, 1945, however, challenges the validity of Secretary Wilbur's view. In a letter of April 27, 1948 (copy enclosed) then then Secretary of the Interior advised the Veterans of Foreign Wars that the Department did not plan to take any action to reverse the Wilbur ruling as to the Imperial Irrigation District. This position taken by the Department in 1948 was called to the attention of the Department of Justice by the enclosed copy of a letter from the then Solicitor of this Department to the Solicitor General of the United States, dated February 5, 1958. However, the Department of Justice in pleadings filed in the case of *Arizona* v. *California* has expressed disagreement with Secretary Wilbur's ruling. We enclose in this

connection a copy of a memorandum filed by the Solicitor General in *Arizona* v. *California*. You will find of particular interest footnote 5 commencing on page 2 and footnote 45 on page 30a in the Solicitor General's opinion.

The continuing press of other matters has caused us to defer a current study of the Imperial situation. We hope, however, to go into it in the future, as circumstances of available staff and time permit.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

* * *

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff*, v. IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendant*.	NO. 67-7-K CIVIL COMPLAINT

COMES NOW plaintiff and for cause of action against defendant alleges as follows:

1. This is a civil action brought by the United States. This Court has jurisdiction under Title 28, section 1345, United States Code.

2. Imperial Irrigation District is an irrigation district created, organized and existing under and by virtue of the laws of the State of California, with its principal place of business at El Centro, California.

3. The Act of December 21, 1928 (45 Stat. 1057), commonly known as the "Boulder Canyon Project Act," authorized the Secretary of the Interior (herein referred to as the Secretary) to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, and a diversion dam, main canal and appurtenant structures connecting such diversion dam with Imperial and Coachella Valleys in California. Pursuant to this Act, the Secretary constructed Hoover Dam, at Black Canyon, and incidental works, completing the construction of said dam in 1935. On February 1, 1935, the Secretary began storing water in Lake Mead, the reservoir created by Hoover Dam, and since that date has continuously operated and maintained Hoover Dam for the purposes of regulating the flow of the Colorado River, water storage and for other purposes as required by said Act.

4. Section 4(b) of the Boulder Canyon Project Act provides that before any money is appropriated for the construction of the All American Canal and appurtenant structures, or any construction work is done upon said canal or contracted for, the Secretary of the Interior shall make provision for revenues, by contract or otherwise, to insure repayment of the construction, operation and maintenance of said project works in the manner provided in the reclamation law.

5. Section 5 of the Boulder Canyon Project Act authorizes the Secretary, under such general regulations as he may prescribe, to contract for the storage of water in Hoover Dam and for the delivery thereof, and provides that no person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract as stated in the Act.

6. Section 14 of the Boulder Canyon Project Act provides that the Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation and maintenance of the works authorized by the Act. Section 12 of said Act defines the reclamation law as that certain act of the Congress of the United States, approved June 17, 1902, entitled "An Act

appropriating the receipts from the sale and disposal of public land in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," and the acts amendatory thereof and supplemental thereto.

7. At the time the Boulder Canyon Project Act was enacted and became effective, and at the present time, section 46 of the Act of May 25, 1926, 44 Stat. 649, was and is a part of the reclamation law, as defined in the Boulder Canyon Project Act.

8. Section 46 of the Act of May 25, 1926, provides in pertinent part that:

> No water shall be delivered upon the completion of any new [reclamation] project until a contract * * * in form approved by the Secretary of the Interior shall have been made with an irrigation district * * * organized under State law providing for payment by the district of the cost of constructing, operating, and maintaining the [project] works during the time they are in control of the United States * * *. Such contract * * * shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior * * *.

The foregoing section 46 is hereinafter referred to as the land limitation provisions of reclamation law.

9(a). On December 1, 1932, the United States and Imperial Irrigation District, acting pursuant to the Boulder Canyon Project Act, entered into a contract, a copy of which is annexed hereto as Exhibit A, providing for con-

struction by the United States of a diversion dam in the main stream of the Colorado River, known as Imperial Dam, and a canal and appurtenant structures connecting Imperial Dam with Imperial and Coachella Valleys, California, known as the All American Canal, and requiring defendant to pay to the United States the actual cost of constructing such works. Article 8 of said contract, Exhibit A, also required defendant, upon notice of completion from the Secretary, to assume the care, operation and maintenance of Imperial Dam and the All American Canal, with the United States reserving the right, from time to time, in the Secretary's discretion, to resume operation and maintenance of Imperial Dam. Also, under Article 20 of said contract, Exhibit A, the United States reserved the right to assume control of all or any part of any of the works transferred to defendant, and to care for, operate and maintain the same, for as long as the Secretary deemed necessary or advisable, if in his conclusive judgment, defendant did not carry out the terms and conditions of the contract to their full extent and meaning. Section 17 of said contract, Exhibit A, required the United States to deliver to defendant, at a point in the Colorado River immediately above Imperial Dam, from storage in Lake Mead, the waters of the Colorado River apportioned to it as provided in said contract.

9(b). On March 4, 1952, said contract, Exhibit A, was amended and supplemented by a contract, a copy of which is annexed hereto as Exhibit B. By Article 10 of Exhibit B it was provided that the United States would retain the care, operation and maintenance of certain facilities at Imperial Dam and along the All American Canal including the California Sluiceway at Imperial Dam, which controls the passage of Colorado River water through the Dam and the quantity of water that is available for diversion into the All American Canal, the headworks at the east end of Imperial Dam, and associated desilting works, for the diversion of Colorado River water for users in Arizona, and all turnouts in the Imperial Dam — Pilot Knob section (Engineer Station 1098) of the All American Canal serving the Yuma Federal Reclamation Project.

10. Pursuant to Exhibit A, the United States constructed Imperial Dam and the All American Canal. In 1940, the

United States, while retaining the care, operation and maintenance of these facilities, commenced delivering and diverting stored Colorado River water at Imperial Dam and carrying such water through the All American Canal for use of defendant. Pursuant to Exhibit A, the Secretary transferred to defendant on March 1, 1947, the care, operation and maintenance of the main branch of the All American Canal west of Engineer Station 1098. Pursuant to Exhibit B, on May 1, 1952, the Secretary transferred to defendant the care, operation and maintenance of the works east of Engineer Station 1098, with exceptions and limitations described in subparagraph (b) of paragraph 9 of this complaint. Since 1942, defendant's entire water supply from the Colorado River has been released from storage in Lake Mead, diverted at Imperial Dam, and carried through the All American Canal. Notwithstanding the above-described transfer of the care, operation and maintenance to defendant, title to Imperial Dam and the All American Canal, as well as to Hoover Dam, is in the United States.

11. Said contract, Exhibit A, does not expressly set forth the land limitation provisions of reclamation law. Article 24 of said contract, however, does reserve to the Secretary the right to prescribe and enforce rules and regulations, not inconsistent therewith, governing the diversion and delivery of water to defendant with the right in the Secretary to modify, revise or extend such rules or regulations as may be deemed proper, necessary or desirable by the Secretary to carry out the true intent and meaning of the law and of the contract, or to protect the interests of the United States.

12. On February 24, 1933, the then Secretary of the Interior, Ray Lyman Wilbur, notified Imperial Irrigation District, by letter, that, in his opinion, the land limitation provisions of the reclamation law did not apply to privately owned land in the district.

13. By Memorandum Opinion No. M-36675, dated December 30, 1964, the Solicitor, Department of the Interior, advised the Secretary that the conclusion reached in said letter from Secretary Wilbur was erroneous and that privately owned irrigable lands in Imperial Irrigation District

are subject to the land limitation provisions of the reclamation law. On December 31, 1964, the Secretary publicly announced that:

> I am instructing Commissioner of Reclamation Floyd E. Dominy to commence discussions with the District in order to implement Solicitor Barry's opinion. We expect these discussions to begin immediately and to conclude in a reasonable period of time. On that basis, Reclamation will continue to deliver water to the District during this interim period.

Thereafter discussions to implement Solicitor Barry's Opinion were held with representatives of Imperial Irrigation District, but such discussions did not succeed in obtaining defendant's compliance with the land limitation provisions.

14. Numerous persons hold in private ownership and are irrigating lands in excess of one hundred and sixty irrigable acres situated in Imperial Irrigation District, and defendant is delivering, for the irrigation of such excess land, water released from storage at Lake Mead, delivered to defendant at Imperial Dam and transported through and by means of the All American Canal. No recordable contracts for the sale of such excess lands have been executed with the owners thereof.

15. Defendant denies that the land limitation provisions of reclamation law apply to it or that such provisions apply to the owners of excess lands within its boundaries, notwithstanding that the water used for the irrigation of the lands within the District is released from storage in Lake Mead, diverted at Imperial Dam, and carried through the All American Canal, from which it is distributed to landowners within the Imperial Irrigation District. Defendant denies the authority of the Secretary to require it, as a condition to future use and enjoyment of water stored at Lake Mead and of Imperial Dam and the All American Canal, to withhold delivery of water so diverted and carried to owners of excess lands within the District who have not executed recordable contracts for the sale of such excess lands as provided in said land limitation provisions.

Defendant has refused to require its water users who are excess landowners to execute recordable contracts for the sale of such excess lands as a condition to water delivery. Owners of a substantial portion of the excess irrigable lands being supplied with irrigation water by defendant, through their representatives, have advised the Department of the Interior that they refuse to execute recordable contracts until and unless it is judicially determined that the land limitation provisions of reclamation law are applicable to such water deliveries.

16. There exists an immediate and substantial controversy with defendant, whose legal interests are adverse to those of plaintiff, as to whether defendant is required to comply with the land limitation provisions of reclamation law in delivering Colorado River water, stored, diverted and transported as aforesaid, to privately owned lands situated in Imperial Irrigation District.

17. In order to resolve the controversy with defendant, plaintiff must either resume control of the facilities of the All American Canal now being operated by defendant and withhold delivery of water to defendant until it is in compliance with the land limitation provisions of reclamation law, or seek a judicial determination of the applicability of such provisions. Resumption of control of the facilities and termination of water deliveries would cause hardship to those landowners within the District, who, not holding excess lands, are not directly involved in the controversy. It is, therefore, in the public interest to secure a judicial resolution of this controversy.

WHEREFORE, plaintiff prays that the Court hold, adjudge and decree that the defendant is bound by the land limitation provisions of reclamation law in the delivery of Colorado River water to all privately owned lands within the boundaries of Imperial Irrigation District.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff,* v. IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants,* JOHN M. BRYANT, ROBERT C. BROWN, THEODORE B. SHANK, HAROLD A. BROCKMAN, CLARA MARIE GUTIERREZ, CHARLES E. NILSON, KAKOO D. SINGH, STEPHEN H. ELMORE and JOHN KUBLER, JR., *Landowner Defendants, both individually and on behalf of members of a class, to wit, all persons owning more than 160 acres of irrigable land within the Imperial Valley in California.*	NO. 67-7-K CIVIL ANSWER OF LANDOWNER DEFENDANTS

Defendants John M. Bryant, Robert C. Brown, Theodore B. Shank, Harold A. Brockman, Clara Marie Gutierrez, Charles E. Nilson, Kakoo D. Singh, Stephen H. Elmore and John Kubler, Jr. and each of them (hereinafter "landowner defendants"), both individually and as members of a class, to wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District in California and devoting to beneficial use water transported via the All-American Canal and delivered to them by defendant Imperial Irrigation District, and for and on behalf of themselves and of all members of said class, for answer to the complaint herein, admit, deny and allege as follows:

I. RESPONSE TO ALLEGATIONS OF COMPLAINT

1. Allege that these landowner defendants and each of them are residents of and within Imperial Irrigation District and own and hold, in private ownership, more than 160 acres of irrigable land lying within the boundaries of said District. Said landowner defendants and each of them are the owners and holders of vested rights and of present perfected rights and to waters diverted from the Colorado River since 1901, transported initially through the Alamo Canal, and since 1942 through the All-American Canal, and delivered to them by the Imperial Irrigation District through its distribution system established long prior to 1929. As used herein, "vested rights" shall mean fixed and established rights in and to (a) the appropriation, diversion and transportation and (b) the beneficial use and continued supply of the waters, of the Colorado River without acreage limitation, such rights being protected and guaranteed by the Reclamation Act of 1902, as amended and supplemented, the Boulder Canyon Project Act and by the Due Process clause of the Fifth and Fourteenth Amendments of the United States Constitution and of § 13 of Article I of the Constitution of California, and by each of same. Included within said "vested rights" are "present perfected rights," which shall have a meaning herein in accordance with the definitions contained in the Decree in *Arizona* v. *California,* 376, 340 (1964), namely water rights acquired in accordance with state law, which rights have been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works and which rights were existing as of June 25, 1929. The vested and present perfected rights of landowner defendants and the class to

which they belong have been exercised since long prior to June 25, 1929 and are now being exercised by the actual diversion of specific quantities of water that have been applied by way of beneficial use to defined areas of land owned, farmed and operated by members of the class to which these landowner defendants belong and which they represent. As set forth more fully hereinafter, these landowner defendants and the class they represent have acquired or held, and have improved and farmed, their lands in justifiable reliance upon the ruling of Secretary of the Interior Wilbur dated February 24, 1933 that the lands lying within the boundaries of the Imperial Irrigation District, "having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned."

2. Admit the allegations contained in Paragraphs 1 and 2 of the complaint.

3. Admit the allegations of Paragraph 3 of the complaint, and allege as follows: Allege that among the "other purposes" for which the Secretary of the Interior has operated and maintained Hoover Dam was and is the satisfaction of vested and of present perfected rights to the beneficial use of the waters of the Colorado River in pursuance of the Colorado River Compact of November 24, 1922, found at 70 Cong. Record at 324 (1928), all as provided in the Boulder Canyon Project Act of 1928.

4. Admit the allegations contained in Paragraphs 4, 5 and 6 of the complaint.

5. Deny the allegations contained in Paragraphs 7 and 8 of the complaint, except that they admit the date of passage and content of § 46 of the Act of May 25, 1926 and allege that said § 46 does not have any application to privately owned lands within the Imperial Irrigation District and further allege that the aforesaid inapplicability of § 46 has at all times since passage of the Boulder Canyon Project Act been recognized by Congress and, down to December 31, 1964, by the Secretary of the Interior, all as will be shown later herein.

6. Answering Paragraph 9 of the complaint, admit the genuineness, due execution and content of the December 1, 1932 contract (Exhibit A to the complaint) between the United States and Imperial Irrigation District, executed pursuant to § 4(b) of the Boulder Canyon Project Act, and of the March 4, 1952 Amendment and Supplement thereto (Exhibit B to the complaint). In this connection, these landowner defendants respectfully invite the attention of the Court to the fact that said contract of December 1, 1932, provides, in Article 17 thereof:

> "As far as reasonable diligence will permit said water shall be delivered as ordered by the District, and as reasonably required for potable and irrigation purposes within the boundaries of the District in the Imperial and Coachella Valleys in California. This contract is for permanent water services but is subject to the condition that Hoover Dam and Boulder Canyon Reservoir shall be used; first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power. This contract is made upon the express condition and with the express covenant that the District and the United States shall observe and be subject to, and controlled by said Colorado River Compact in the construction, management and operation of Hoover Dam, Imperial Dam, All-American Canal, and other works and the storage, diversion, delivery and use of water for the generation of power, irrigation, and other purposes."

The attention of the Court is further invited to the fact that said contract also provides in said Article 17:

> "Nothing in this contract shall be construed to prevent the District from diverting water to the full capacity of the All-American Canal if and when water over and above the quantity apportioned to it hereunder is available, ..."

7. Admit the allegations contained in Paragraph 10 of the complaint.

8. Answering Paragraph 11 of the complaint, admit and allege that said contract, Exhibit A, does not "expressly" or at all set forth the land limitation provisions of the reclamation law and allege further in this connection that all reference to said land limitation provisions was intentionally omitted from said contract by the then Secretary of the Interior, the Honorable Ray Lyman Wilbur, as required by the Boulder Canyon Project Act and its mandate to him for the satisfaction of vested and of present perfected rights in pursuance of Article VIII of the above mentioned Colorado River Compact. Allege further that said contract as written and as amended and supplemented by said contract of March 4, 1952 (Exhibit B to the complaint) has at all times been and is now in full force and effect and binding upon the United States.

9. Answering Paragraph 12 of the complaint, these landowner defendants allege that the ruling of February 24, 1933, by the Secretary of the Interior stated, among other things:

> "Early in the negotiations connected with the All-American Canal contract the question was raised regarding whether and to what extent the 160 acre limitation is applicable to lands to be irrigated from this canal. Upon careful consideration the view was reached that this limitation does not apply to lands now cultivated and having a present water right. These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned. Congress evidently recognized that these lands had a vested right when the provision was inserted that no charge shall be made for the storage, use, or delivery of water to be furnished these areas."

10. Admit the allegations contained in Paragraph 13 of the complaint.

11. Admit the allegations contained in Paragraph 14 of the complaint.

12. Answering Paragraph 15 of the complaint, admit that defendant Imperial Irrigation District denies, and allege that these landowner defendants and the members

of the class whom they represent also deny, that the land limitation provisions of reclamation law apply or ever have applied to said District or to any privately owned lands within the boundaries of said District or to the owners of such lands or the holders of vested and of present perfected rights to the waters of the Colorado River, to wit, these landowner defendants and the members of said class. Admit and allege that defendant District denies, and allege that these landowner defendants and the class whom they represent also deny, the authority of the Secretary to require said District, either as a condition to future use or enjoyment of water stored at Lake Mead or of Imperial Dam or the All-American Canal, or otherwise or at all, to withhold delivery of water so diverted or carried to owners of private lands within the Imperial Valley who have not executed recordable contracts for the sale of any irrigable land they own in excess of 160 acres. Allege that such limitation provisions of the reclamation law are not and have not been applicable to privately owned lands within the boundaries of the Imperial Irrigation District. Admit and allege that defendant District has refused to require these landowner defendants and the class they represent to execute recordable contracts for the sale of such so-called excess lands as a condition to water delivery. Admit and allege that a substantial portion of the owners who hold more than 160 acres of irrigable lands being supplied with irrigation water by defendant District, through their representatives, have advised the Department of the Interior that they refuse to execute recordable contracts for many reasons, including particularly the basic proposition that the land limitation laws do not now have and at no time have had any application to privately owned lands lying within the boundaries of the Imperial Irrigation District.

13. Answering Paragraph 16 of the complaint, admit and allege that there exists an immediate and substantial controversy between plaintiff and not only defendant District but also these landowner defendants and the class whom they represent as to (1) whether defendant is required to comply with the land limitation provisions of reclamation law in delivering Colorado River water stored,

diverted and transported via the All-American Canal to privately owned lands situated within the boundaries of the Imperial Irrigation District and as to the basic question (2) whether said land limitation provisions have any application to privately owned lands lying within the boundaries of said Imperial Irrigation District.

14. Deny the allegations of Paragraph 17 of the complaint, except admit and allege that resumption of control of the All-American Canal facilities and termination of water deliveries by or at the behest of plaintiff would cause wholesale hardship and economic disaster to all the landowners of the Imperial Valley, whatever the size of their holdings, and to all the citizens of the Imperial Valley.

For further answer to the complaint herein, these defendants allege:

II. CONTENTION RE VESTED AND PRESENT PERFECTED RIGHTS.

15. Due to the below-sea-level topography of the Imperial Valley area, it was recognized as early as the middle of the 19th century that irrigation by means of diversion and gravity flow from the Colorado River was feasible. However, it was not until the period of 1892-95 that appropriations for irrigation from the river were initiated. Commencing in 1901, Colorado River water, diverted for use in the Valley area, was channeled through the then newly constructed Alamo Canal, which ran for a portion of its course through Mexico and then back into the United States.

16. During the period 1895-1899 seventeen notices of appropriation under the then provisions of the California Civil Code were posted and recorded covering the diversion of water from the Colorado River for beneficial use within the Imperial Valley. Some of these notices were filed by or on behalf of California Development Co., and it acquired the rest by assignment, all as shown by Exhibit A hereunto annexed and made a part hereof. Each of these notices claimed 10,000 cubic feet flow per second of the waters of the river at a specified point of diversion. The amount

claimed in each of said notices, if present in continuous flow, would approximate 7,000,000 acre feet per year; and the notices each specified the area to be served as including at least 1,000,000 acres of land, including all of the lands now embraced within the Imperial Irrigation District. By 1903, as a result of the distributive facilities constructed by the California Development Co., approximately 12,000 acres of Valley lands were in irrigated cultivation, all as the result of diversions from the river.

17. In the years of 1905-1907 a disastrous flood occurred in the Valley and the Development Company's canal heading on the Colorado River was washed out due to an abnormally high river flow. The result of this breakthrough was that the entire flow of the river poured into the sub-sea-level valley, thus substantially raising the surface of Salton Sea, formerly nearly dry, to 195 feet below sea level and extending its area to approximately 330,000 acres. The break was finally closed in 1907 and the Colorado River returned to its course.

18. Subsequently, the interests of the California Development Co., including all of the appropriative rights then owned by it, passed to the Southern Pacific Railroad, and ultimately in 1916, to the Imperial Irrigation District, which had been organized in 1911. The diversions under the duly noticed appropriations continued, and the ultimate distribution of the Colorado River water, which was carried by the Alamo Canal via Mexico to the individual farm holdings, was handled by thirteen local mutual water companies. In 1922, these companies and their facilities were acquired by the District.

19. On October 23, 1918, a contract was executed between the Government and Imperial Irrigation District, providing for a connection with, and diversions by the District from, Laguna Dam on the Colorado River. Cf. 43 U.S.C. § 617i. This contract provided, without any acreage limitation of any kind, for the supplying of water to all of the lands within the Valley. Section 10 of the Boulder Canyon Project Act provides that nothing in the Act shall be construed as modifying said contract of October 23, 1918.

20. Conditions of natural growth and expansion in the Valley were reflected in augmented diversions in exercise of the various existing appropriative rights. While only 141,000 acres were being irrigated in the Valley in 1908, by 1920 over 415,000 acres were under irrigation.

21. All of the rights of diversion and transport as noted above, were ultimately acquired by the said Irrigation District, while the actual beneficial use has been made by the individual growers. As a result of this situation, the water rights have been divided: The District, as trustee for the landowners within its boundaries has rights of appropriation, development and transport; the individual landowner has vested and present perfected rights of beneficial use, enjoyment, and continued supply; and each is a successor in interest of the or an original appropriator and of the California Development Co.

22. On November 24, 1922, the Colorado River Compact was executed and ultimately ratified by the requisite number of contracting states, including California, and approved by Congress, cf. Boulder Canyon Project Act, infra, Section 13(a); and for text of the compact see House Doc. No. 605, 67th Cong., 4th Sess. Article VIII of said Colorado River Compact, to which the State of California was a party, provided and now provides in pertinent part that

> "Present perfected rights to the beneficial use of waters of the Colorado River system are unimpaired by this compact."

23. The concept of an All-American canal came into being in the early years of the present century. The 1905 break-through and flood emphasized the dangers of the Alamo Canal route through Mexico; and there were also present the aggravations resulting from difficulties with Mexican laws which impeded adequate levee and canal maintenance. Ultimately, the construction of the All-American Canal was authorized as part of the general project authorized by the Boulder Canyon Project Act of December 21, 1928, 45 Stat. 1057, 43 U.S.C. § 617, et seq. At the time of the passage of the Project Act in 1928, the Irrigation District had a fully developed distributive system, comprising approximately 1700 miles of main and lateral canals and providing for the irrigation of substantially the same amount of acreage as is now being irrigated.

24. The contract between the Government and Imperial Irrigation District for the "construction of diversion dam, main canal and appurtenant structures and for delivery of water" in connection with the Boulder Dam Project and the All-American Canal, was executed December 1, 1932, and supplemented by a subsequent contract dated March 4, 1952, all as hereinabove mentioned. The canal was completed and first put into operation in 1942. After a brief "shakedown" period, the All-American Canal finally, in 1943, fully supplanted the Alamo Canal as a vehicle for the transmission of water from the river for beneficial use on the lands within the Imperial Irrigation District. The effect of the new canal was thus to substitute a new conduit for the transmission of the water from the diversionary works on the river to the already established network whereby the District continued to carry out its long existing function of distributing the water to those — the individual landowners — who had for years been putting it to beneficial use under continued supply by said District or its predecessors.

25. The Irrigation District, acting in light of Secretary Wilbur's assurance that the limitation laws are not applicable to privately held lands lying within the boundaries of said District, ceased using the Alamo Canal in 1942 and wrote it off at a loss of $15,000,000. In 1960, the District sold its concession rights in the Alamo Canal to the Cia Dei Torrenos y Ajuas de la Baja California, a Mexican corporation.

26. The District and its predecessors have at all times diligently constructed, developed, extended and maintained its distributive network and transport facilities in the exercise of the appropriative rights which it holds, with the result that it now diverts and distributes to its member landowners, for beneficial use upon their respective lands, water sufficient for the irrigation of substantially the same amount of acreage as was irrigated in 1929 through the use of the Alamo Canal. The District diversions from the

river have never exceeded the 10,000 second-feet specified in each of the original Notices of Appropriation earlier mentioned.

27. In enacting the Project Act in 1928, Congress was well aware that there was a fully developed system in the Imperial Valley for the distribution of Colorado River water as to which rights of appropriation and beneficial use had long since been vested and perfected. Accordingly Congress by the Boulder Canyon Project Act transmuted into positive law the guarantee of the satisfaction of vested and of present perfected rights contained in the Colorado River Compact and, in so doing, also transmuted into positive law the provision of the Compact that such rights should be satisfied, not from the natural flow of the River, as theretofore, but from water which should be stored behind the Hoover Dam facility.

28. Under Federal law, the rights guaranteed by the Boulder Canyon Project Act are rights acquired, perfected and vested under state law, which is therefore here controlling as to the nature and extent of such rights, all as contemplated by such Federal law.

29. All water presently diverted from the river and delivered by the All-American Canal for distribution through the Irrigation District's facilities to privately held lands, is delivered in satisfaction of vested and present perfected rights, as guaranteed by the Boulder Canyon Project Act, 43 U.S.C. § 617e, by the Colorado River Compact, and by the contract dated December 1, 1932, between the Government and Imperial Irrigation District. The rights in question were long since and are now developed, exercised and perfected by the Imperial Irrigation District and its predecessors and put to beneficial use by the landowners within its borders; and as such are vested and present perfected rights, all to the knowledge of the plaintiff and particularly its Secretary of and its Department of the Interior.

30. It is the mandatory duty of the Secretary of the Interior to contract for the satisfaction of and to satisfy such vested and present perfected rights appurtenant to

lands and ownerships of lands within the Imperial Valley or the Imperial Irrigation District, or both, without limitation as to the acreage held in such ownerships.

31. The aforesaid duty of the Secretary of the Interior to satisfy vested and present perfected rights of the landowners out of stored water is wholly incompatible with any attempt to impose land limitations upon such landowners; and the same is also true as to the attempt to import the land limitations into the Boulder Canyon Project Act which guarantees such vested and present perfected rights.

III. CONTENTION RE LEGISLATIVE HISTORY.

32. Paragraphs 15 to 27, inclusive, are incorporated herein by reference.

33. The legislative history of the Boulder Canyon Project Act shows that Congress (a) intended to and did preserve and protect the vested and present perfected water rights of the owners of private lands in the Imperial Valley and (b) did not intend to and did not impose a 160-acre limitation or any other land limitation on the delivery of Colorado River water by the All-American Canal to the privately owned lands of the Imperial Valley.

IV. CONTENTION RE ADMINISTRATIVE PRACTICE.

34. Paragraphs 15 to 26, inclusive, are incorporated herein by reference.

35. The ruling of Secretary Wilbur on February 24, 1933, referred to in Paragraph 9 hereof, to the effect that the land limitation laws are not applicable to the Imperial Valley was based on a long standing Interior Department policy relating to the recognition of vested rights (see Paragraphs 36 to 36.6, inclusive, hereof) and has been consistently followed since that time until Solicitor Barry's December 30, 1964 opinion (see Paragraphs 37 to 37.13, inclusive, hereof).

36. The provisions of the Project Act guaranteeing satisfaction of vested and of present perfected water rights without reference to acreage limitations were in full

harmony w h a policy of the Department of the Interior adopted at least as early as 1910. Among instances of such interpretations, particularly with reference to the recognition and satisfaction of vested water rights as opposed to acquiring them by exercise of the right of eminent domain, or, as is being attempted here, to confiscating them by compelling an *in terrorem* transfer of such rights to strangers at arbitrary prices arbitrarily set by the Secretary of the Interior, are the following, all of which are well known to plaintiff and to the said Secretary.

36.1 The first documentary recognition of the principle that where vested water rights were concerned, the Department of the Interior was obligated either to recognize such rights or pay for their acquisition by eminent domain or inverse condemnation was the opinion-memorandum of the Director of Geological Survey to the Secretary of the Interior, November 16, 1905, in connection with the Umatilla Project. Based upon said opinion-memorandum and upon the opinion of the Assistant Attorney General, 34 L.D. 351, in the same matter, the then Secretary decided he was obligated to respect and to satisfy such rights; and he did so.

36.2 On May 31, 1910, the Secretary promulgated a regulation to the effect that the provisions of § 5 of the Reclamation Act of 1902 limiting the area for which the use of water may be sold, does not prevent recognition of a vested right for a larger area and protection of the same "by allowing the continued flowing of the water covered by the right through works constructed by the Government under appropriate regulations and charges." 38 L.D. 637, Par. 45.

36.3 In the Anna M. Wright case, in 1911, the 1910 regulation was applied by the Department in support of the claim of a widow, owning 160 acres in her own right, to succeed to the additional 160 acres held by her husband during his lifetime, the water rights appurtenant to each 160 acre parcel being vested. 40 L.D. 116. To the same effect as regards the application of the 1910 regulation to so-called excess lands are, to the present knowledge of these landowners defendants, the Newlands and the North

Platte projects, in addition to the Umatilla Project mentioned above.

36.4 The 1910 regulation was carried into a 1916 compilation of departmental regulations, 45 L.D. 385, 386, § 81, and the Federal Code of Regulations, Title 43, § 230.70, formerly § 230.80, so provides at the present time.

36.5 On October 23, 1918, then Secretary Lane executed the Laguna Dam contract with Imperial Irrigation District. That contract contained no acreage limitation clause and provided for the supplying of irrigation water, without limitation, for all lands within the District.

36.6 The foregoing administrative precedents were summarized by Secretary Wilbur in his ruling of February 24, 1933, as follows:

"In connection with the activities of the Bureau of Reclamation it has been held that the provisions of section 5 of the reclamation act restricting the sale of a right to use water for land in private ownership to not more than 160 acres will not prevent the recognition of a vested water right for a larger area, and protection of the same by allowing the continued flowage of the water covered by the right through the works constructed by the Government. (Opinion of Assistant Attorney General, 34 L.D. 351; Anna M. Wright, 40 L.D. 116). On many projects it has been the practice to recognize vested rights in single ownership in excess of 160 acres and to deliver the water necessary to satisfy such rights through works constructed by and at the expense of the Government. This is true of the Newlands project, the North Platte project, the Umatilla project, and others."

37. Consistent administrative interpretations of the Department of the Interior are wholly in accord with the proposition that the land limitation laws do not apply, and never have applied, to lands held in private ownership in the Valley. Among such interpretations are the following:

37.1 The contract of December 1, 1932 executed by the then Secretary and the District likewise, as we have seen,

not only contained no acreage limitation clause but expressly provided for the satisfaction of vested and of perfected rights pursuant to Article VIII of the Colorado River Compact. The provisions of the contract are and each of them is wholly incompatible with any concept of the applicability of the excess land limitations to lands within the Imperial Irrigation District.

37.2 A memorandum dated February 7, 1933 from Assistant Commissioner of Reclamation Porter W. Dent to Northcutt Ely, Esq., Executive Assistant to Secretary Wilbur, stated as follows with reference to the privately owned lands in the Imperial Valley:

> ". . . So far as I am advised, all who have given this matter consideration agree that this limitation does not apply to lands now cultivated and having a present water right. The view has been, and is, I believe, that these lands having already a water right, are entitled to have such right recognized without regard to the acreage limitation mentioned . . . . "

37.3 Mr. Ely replied to Assistant Commissioner Dent in a letter dated February 16, 1933 saying, "I agree with the views expressed in your memorandum of February 7, regarding the case of *Charles Malan v. Imperial Irrigation District, et al.*"

37.4 Secretary Wilbur's February 24, 1933 ruling to the District, referred to and quoted in Paragraph 9 hereof, was written during the pendency of *Hewes v. All Persons,* being action No. 15460 on the files of the Superior Court for Imperial County, and with the intention that the Court, the District, and the landowners should rely upon its contents and its ruling as to the inapplicability of the acreage limitations to privately owned lands within the Valley; and the Court, the District, and the landowners generally did so rely.

37.5 In a letter dated March 1, 1933 and written during the pendency of the *Hewes* case by Assistant Commissioner Dent to Richard J. Coffey, Bureau District Counsel, Los Angeles, the Assistant Commissioner stated in substance as follows:

> (a) The same principle, i.e., in applicability of the excess land limitation to private lands in the Valley, applied as well to the provisions of § 46 of the Act of May 25, 1926, mentioned in Paragraph 7 of the complaint herein, as to the provisions of Section 5 of the Reclamation Act of 1902, mentioned by Secretary Wilbur in his letter-opinion of February 24, 1933.
>
> (b) The All-American Canal work constitutes a special project specifically authorized by the Boulder Canyon Project Act and thus stands upon a basis quite different from the ordinary concept of a project.
>
> (c) The acreage limitation in the reclamation law, including § 46 of the Act of May 25, 1926, does not apply to lands having a vested right.
>
> (d) The specific provisions of the Boulder Canyon Project Act are controlling over the general provisions of the reclamation law.
>
> (e) Section 46 is of general application and of course contemplates a case where a project is being constructed from which a new and complete water right will be sold and where a distribution system is constructed and water deliveries made through it.

37.6 In a 1937 study of excess land ownerships, Commissioner of Reclamation John C. Page addressed to all field offices a communication whose subject was "Irrigable land holdings in excess of 160 acres in single ownerships." This document stated, in pertinent part, that the 160-acre limitation "is not applicable in any case where a vested non-project water right for a larger area has been acquired and recognized."

37.7 B. P. King, an attorney in the employ of the Bureau of Reclamation, was authorized by Commissioner of Reclamation W. J. Burke to embark upon a comprehensive review of the excess land laws. The result was a publication in 1941 entitled "The Excess Land Provisions

of the Federal Reclamation Laws." Among other things, the said publication stated:

(a) Where the water rights belong to the owner of the land, a contract executed between the Government and the carrier of the water limiting the right of the owner of the land to enjoy the use of pre-existing water rights could have no validity insofar as the landowner is concerned unless his consent to the contract could be shown.

(b) If the Government, under contract with an irrigation district, constructs a new main canal to replace more or less unsatisfactory existing works, the enforcement of the excess land restrictions would appear to deprive the landowners holding more than 160 acres of property, i.e., the right to utilize a previously perfected water right free of such restrictions, without due process of law.

(c) Speaking of the December 1, 1932 contract between the Government and Imperial Irrigation District: "The contract does not, by any of its terms, stipulate that water shall be furnished only in accordance with the provisions of the Reclamation Laws . . . ." If Congress had intended to make the excess lands restrictions operative, it seems a reasonable assumption that some such language as follows would have been used:

"which said Reclamation law shall govern the construction, operation and maintenance of said works and the use of water therefrom."

(d) "The conclusion that the excess lands restrictions do not apply to the All-American Canal project is supported by the decision of the Superior Court of California for Imperial County in the proceedings confirming the contract with the Imperial Irrigation District. (Unreported opinion dated May 24, 1932 in the case of Evan T. Hewes, et al. v. All Persons.)"

(e) "Also, the fact that confirmation of the contract was made a condition to construction of the project

and the fact that the Government after confirmation of the contract, went ahead with construction indicates administrative acquiescence in the views expressed by the California Court."

37.8 On January 14, 1942, Commissioner of Reclamation John C. Page wrote a letter to Commissioner W. F. Rhea of the Farm Credit Administration (Land Bank Division) confirming earlier oral advices to representatives of the Federal Land Bank at Berkeley, California, that as regards the applicability of the 160-acre limitation to privately owned lands within the Imperial Irrigation District, "it is the opinion of the Bureau of Reclamation that the limitation does not apply to such lands." Said letter enclosed an extract from the opinion of the trial judge and copies of the Findings in the *Hewes* case covering the point under discussion.

37.9 In 1946, the Bureau of Reclamation published its "Landownership Survey on Federal Reclamation Projects." The publication sets forth various tabulations including a listing of "known excess land in violation of acreage limitations, project by project." For "Boulder Canyon Project: All-American, Imperial Valley" the excess acreage is shown as zero, accompanied by the footnoted explanation: "Excluded in accordance with the ruling of the Secretary, February 24, 1933."

37.10 In 1948, Secretary of the Interior Krug, responding by letter to an inquiry of the Veterans of Foreign Wars questioning the Department's policy of not imposing the acreage limitation to lands in the Imperial Valley, stated the reasons for that policy as follows:

". . . we have concluded that inasmuch as the Secretary of the Interior then charged with the administration of law construed the acreage limitation as not being applicable to lands of the Imperial Irrigation District under the facts as he then understood them, and it being clear that the then owners and subsequent purchasers of irrigable lands in the Imperial Irrigation District were entitled to rely upon advice from the Secretary and thus establish an economy in the

district consistently with that advice, they should not now be abruptly advised that the economy of the project is to be changed under a contrary ruling of the present officer charged with the administration of the law." Letter from Secretary of Interior Krug to Mr. H. C. Hermann, Veterans of Foreign Wars, April 27, 1948.

37.11 On April 19, 1950 the Commissioner of the Bureau of Reclamation advised the Solicitor General in connection with the case of *United States v. Gerlach Live Stock Co.* ultimately reported at 339 U.S. 725, that the water rights of the Imperial Irrigation District discussed in the *California Land Development* case, 33 L.D. 391, were acquired by the District in 1916 and the rights required for the District were "fully covered" by the provisions of the Boulder Canyon Project Act and the contracts made by the District with the United States thereunder.

37.12 On March 4, 1952, a supplement and amendment to the December 1, 1932 All-American contract between the Government and the District (Exhibit B to the complaint herein) was executed by the then Secretary and the District. It contained nothing with regard to acreage limitations and it reaffirmed, subject only to its own effect, the 1932 contract which, as earlier noted, likewise contained no acreage limitations. Such reaffirmance continued in effect the 1932 covenants with reference to the controlling effect of the Colorado River Compact.

37.13 Again in 1958, in response to an inquiry from the Justice Department in connection with the case of *Arizona v. California*, the Department of the Interior reaffirmed its position that the economic reliance placed upon Secretary Wilbur's ruling by the residents of Imperial Valley precluded a reversal of the ruling. In a letter of February 5, 1958, to the Solicitor General, the Solicitor of the Interior Department, Elmer F. Bennett, stated in part:

"The water contract between the United States and the Imperial Irrigation District was executed December 1, 1932, some 25 years ago. The negotiations leading to the contract were lengthy and extensively in the public view. Except at the time of court confirmation, I am not aware of any challenge as to the legality of the contract during this entire period. Water has been delivered to the lands of Imperial District pursuant to the contract since the early 1940's. I am not aware that any administrative action has been proposed or taken either by the preceding administration or by this one to recognize or enforce application of the 160 acre limitation to the lands of the Imperial Irrigation District.

"At the time of court confirmation of the Imperial water contract (*Hewes v. All Persons*, May 24, 1933, unreported, before the Superior Court for Imperial County, California), defendant Malan, the owner of 210 acres, attacked the validity of the contract on the ground that the 160 acre limitation would prevent water delivery to all of his land. The court found the contract valid in all respects . . . . The United States acting through the then Secretary of the Interior accepted the contract as having been confirmed and acting thereon proceeded to initiate construction of the All-American Canal and engaged upon a variety of transactions in reliance upon the validity of the contract. There must surely arise a point of time, again I believe long since past, when the contract in keeping with the terms of Article 31 became binding upon the United States and the District. To treat otherwise at this date could have far-reaching effect."

38. The acts and conduct on the part of the various incumbent Secretaries of the Interior and the various incumbent Commissioners of Reclamation and as well the Department of the Interior and its personnel and the documents referred to in the preceding subparagraphs of Paragraphs 35 to 37.13, inclusive, hereof are not all inclusive but are subject to augmentation through use of the discovery procedures.

39. Each and all of the acts and conduct above alleged in Paragraphs 35 to 37.13, inclusive, hereof as regards the

incumbent Secretaries of the Interior, the incumbent Commissioners of Reclamation and as well the Department of the Interior and its various personnel were done and carried on, and each and all of the documents referred to in said subparagraphs were issued, in compliance with law and in the performance of, and within the scope of, lawful authority.

40. The acts and conduct and as well the documents referred to in Paragraphs 35 to 37.13, inclusive, hereof constituted a reasonable contemporaneous, and long standing interpretation on the part of the officials and the Department of the Government charged with the administration of the reclamation laws of the United States that the land limitation laws have no application to privately owned lands within the Imperial Irrigation District.

41. The acts and conduct and as well the documents referred to in Paragraphs 35 to 37.13, inclusive, hereof, constituted a continuing series of representations by the officials and the Department of the Government charged with the administration of said laws to the public and to the private landowners within the Imperial Valley that the acreage limitation laws do not have any application to privately owned lands within said Valley or said District, and the public and the landowners in said Valley have justifiably and in good faith relied to their detriment upon said representations, as is more fully alleged in Paragraphs 49 to 51 hereof, inclusive.

V. CONTENTION RE CONGRESSIONAL RATIFICATION.

42. Paragraphs 15 to 26, inclusive, and Paragraphs 35 to 41, inclusive, are incorporated herein by reference.

43. The administrative construction embodied in Secretary Wilbur's ruling of February 24, 1933 and in the other rulings and interpretations set forth in Paragraphs 35 to 39, inclusive, has been ratified and approved by Congress and the President through the enactment of appropriation measures and other legislative acts over a period of 34 years.

VI. CONTENTION RE RES ADJUDICATA.

44. Paragraphs 15 to 26, inclusive, are incorporated herein by reference.

45. 43 U.S.C. § 511 provides in pertinent part that no contract such as that referred to in Paragraph 24 hereof shall be binding upon the Government until the proceedings on the part of the District for the authorization of the execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction. Article 31 of the December 1, 1932 Contract provided that the District prosecute to final judgment "proceedings in court for a judicial confirmation of the authorization and validity of this contract." Such a proceeding was duly filed, an action *in rem* entitled *"Hewes v. All Persons,"* etc., being action No. 15460 on the files of the Superior Court for Imperial County, California. The court in such proceeding upheld the authorization and validity of the contract and in its Finding No. 35 specifically found that the delivery of water should not be limited to 160 acres in single ownership. Finding 35 states as follows:

> "That under said Contract between the United States and Imperial Irrigation District, dated the 1st day of December, 1932, the delivery of water will not be limited to 160 acres in a single ownership and that the lands of the defendant Charles Malan in excess of 160 acres will not be denied water because of the size of said ownership, and that water service to lands regardless of the size of ownership will not be in any manner affected by said contract, so far as the size of individual ownership is concerned." (*Hewes v. All Persons,* Findings of Fact and Conclusions of Law, p. 26)

In its Opinion the Court held: "There is nothing in the statute [Boulder Canyon Project Act] or in the contract limiting the acreage to which water may be sold and delivered." (p. 24) All of this, including the fact that said judgment was binding as an *in rem* judgment upon defendant District and upon all persons having an interest in the subject matter of said contract, was known to the plaintiff and to the Department of the Interior. Pursuant

to Article 31 of the contract, certified copies of the documentary proceedings in said action were furnished to the Department. The Department and the Government, with full knowledge of the holding and the findings, including Finding No. 35, in *Hewes v. All Persons,* acquiesced in the same for over 30 years, as did all persons and all parties, including the District, above mentioned. As a result, the judgment in the *Hewes* case is binding upon the United States and upon each and all of said persons and parties, all as contemplated by 43 U.S.C. § 511 above mentioned.

VII. CONTENTION RE CONTRACT

46. Paragraphs 15 to 25 and 45 are incorporated herein by reference.

47. The contract of December 1, 1932 between the United States and the Imperial Irrigation District, as written, is binding upon the United States, as contemplated by 43 U.S.C. § 511.

VIII. CONTENTION RE ESTOPPEL.

48. Paragraphs 15 to 26, inclusive, and Paragraphs 35 to 41, inclusive, are incorporated herein by reference.

49. The public and the private landowners within the Imperial Valley and the Imperial Irrigation District at all times from as early as 1905 down to December 31, 1964 have justifiably and in good faith relied upon the administrative construction embodied in Secretary Wilbur's ruling of February 24, 1933 and the other rulings set forth in Paragraphs 35 to 39, inclusive, to their detriment in that

(a) substantially every purchase of, and loan of money secured by lands and water rights appurtenant thereto during the period 1905-1964, both inclusive, was made in the belief that there were no applicable limitations or restrictions as to the number of acres of land which might be held in single ownership without impairment of water rights appurtenant to such land;

(b) substantially all improvements to lands purchased during the period 1905-1964 were made in the belief that the limitation provisions of the reclamation law are not

applicable to privately owned lands in the Valley; and the costs of such improvements, including the installation and maintenance of tile drainage therefrom and thereunder, has been substantial; and

(c) substantially all private investments during the period 1905-1964 in machinery and equipment for use on farms exceeding 160 acres were made in the belief that said limitations were inapplicable in the Valley.

50. The aforesaid justifiable reliance was induced, fostered, engendered and encouraged by the administrative construction embodied in Secretary Wilbur's ruling of February 24, 1933 and by the other administrative interpretations set forth in Paragraphs 35 to 37.13, inclusive.

Reliance upon the inapplicability of the provisions of the reclamation law to privately owned lands in the Imperial Valley has resulted in the development of the area, so far as size of operative ownerships is concerned, along economically efficient lines. The advent of modern machinery and the development of improved methods of farming technology have resulted in a natural expansion of farm sizes in the Valley which parallels that evidenced generally in those parts of the state and in the nation where natural conditions of economic growth are permitted to prevail. The value of agricultural products in the Valley, over all, increased from some $4 million in 1909 to approximately $200 million in 1965. The gross value of livestock and dairy products in the Valley in 1965 was approximately $64,400,000, and leading crop values were as follows:

Cotton Lint	$22,700,000
Hay, Alfalfa	22,300,000
Lettuce	20,100,000
Sugar Beets	19,700,000
Barley	11,400,000
Sorghum	10,800,000
Pasture	3,100,000
Cotton Seed	2,900,000
Carrots	2,900,000
Tomatoes	2,700,000

(Continued)

Cantaloupes	$2,400,000
Watermelons	2,100,000
Onions	2,000,000
Asparagus	1,500,000
Alfalfa Seed	1,400,000
Mixed Vegetables	1,100,000

51. Imposition of the limitation provisions of the reclamation law at this late date would drastically disrupt the entire economy of the Imperial Valley to the detriment of the private landowners who have justifiably relied on the aforesaid administrative construction and other rulings and interpretations, as well as to the detriment of every resident of the Imperial Valley whose livelihood depends on the agricultural economy which has been developed in the Valley in reliance on said administrative construction and other rulings and interpretations.

52. By reason of the foregoing facts and circumstances, the complaint herein is without equity.

53. By reason of the foregoing facts and circumstances, the plaintiff is estopped now to assert that the land limitation provisions of the reclamation law are applicable to privately owned lands within the Imperial Irrigation District.

IX. CONTENTION RE DUE PROCESS.

54. Paragraphs 15 to 26, 29 to 31, 35 to 37.13 and 49 to 53, all inclusive, are incorporated herein by reference.

55. The application of § 46 of the Act of May 25, 1926, to lands within said District owned and held by the class of landowners to which these landowner defendants belong would deprive said members of said class and each of them of their property, to wit, their respective rights to a continued supply of water from the Colorado River, for beneficial use upon their irrigable lands, and the whole thereof, without due process of law within the intendment of the Fifth Amendment to the Constitution of the United States. In the event of compliance with said § 46, the result would be a forced sale of both the land and of the

vested and the present perfected water right appurtenant thereto at a price fixed by a stranger, to wit, the Secretary of the Interior. In the event of refusal to execute a recordable contract consenting to such forced sale at a price so to be fixed, the result would be a deprivation of the water and of the vested and present perfected right to its beneficial use upon the land which deprivation would, in turn, render the land worthless.

56. The vested and present perfected rights of these landowner defendants and of the members of the class to which they belong to a continued supply of water from the Colorado River for beneficial use upon their respective irrigable lands, and the whole thereof, are valuable rights of property appurtenant to said lands. But for the duty of the United States to satisfy said rights, said defendants and said members and each and all thereof would, in the event of impairment or destruction by plaintiff of said rights, be entitled to just compensation for their taking within the intendment of the Fifth Amendment to the Constitution of the United States, the amount of such compensation to be determined and awarded in manner and form as provided by law.

WHEREFORE, these defendant landowners for and on behalf of themselves and the class which they represent, respectfully pray that this Honorable Court declare, hold, adjudge and decree as follows:

1. The defendant Imperial Irrigation District is not bound by the land limitation provisions of reclamation law in the delivery of Colorado River water to any of the privately owned lands within the boundaries of Imperial Irrigation District;

2. The land limitation provisions of reclamation law have no application to privately owned lands lying within the Imperial Irrigation District;

3. These landowner defendants and each of them and the class which they represent and each of the members thereof and each and all their respective predecessors in interest have and for more than forty years last past have had vested rights in and to the continued and continuous

supply through the distribution facilities of defendant Imperial Irrigation District of the waters of the Colorado River theretofore dedicated to public use and to beneficial use upon their respective and privately owned lands irrespective of acreage held in single or other ownership;

4. These landowner defendants and each of them and the class which they represent and each of the members thereof and each and all their respective predecessors in interest have and since June 25, 1929 have had present perfected rights in and to said continued and continuous supply of said waters through the distribution facilities of the defendant Imperial Irrigation District, irrespective of acreage held in single or other ownership;

5. The irrigable land held in private ownership by these landowners defendants and by the members of the class which said defendants represent herein is held by them, respectively, free and clear of any claims of plaintiff that the land limitation provisions of reclamation law have any application to said lands or any thereof, or that said land limitation provisions are binding either upon defendant Imperial Irrigation District or upon said owners of said lands or any thereof, or that said provisions have any operation or limiting effect upon deliveries of Colorado River water to said lands or any thereof;

6. It is the duty of the United States to respect and to refrain from interfering, directly or indirectly, with the vested rights of these landowner defendants and the members of the class which said defendants represent herein to continued and continuous supply of the waters of the Colorado River.

7. It is the duty of the United States to satisfy present perfected rights in and to the waters of the Colorado River owned and held by these landowner defendants and each of them and by each and all of the members of the class which these landowner defendants represent and to refrain from interfering, directly or indirectly, with the enjoyment of such rights or the beneficial use of said waters upon the lands or any thereof owned or held by said defendants or by said members of said class.

LIST OF NOTICES OF APPROPRIATIONS AT HANLON HEADING MADE DURING PERIOD 1895-1899 AND ASSIGNMENTS TO THE CALIFORNIA DEVELOPMENT COMPANY

Item No.	Notice by	Notice Posted	Notice Recorded	Assignment to C. D. Co.	Assignment Recorded
B-114	E. I. Rockwell	May 16, 1895	May 18, 1895	Aug. 15, 1911	Aug. 19, 1911
B-116	W. T. Gonder	July 15, 1895	July 17, 1895	[1]Jan. 25, 1899	Feb. 1, 1899
B-117	W. T. Heffernan	Sep. 13, 1895	Sep. 16, 1895	[2]Jan. 18, 1899	Feb. 1, 1899
B-118	W. T. Gonder	Nov. 12, 1895	Nov. 14, 1895	Jan. 25, 1899	Feb. 1, 1899
B-120	W. T. Gonder	Jan. 14, 1896	Jan. 16, 1896	Jan. 25, 1899	Feb. 1, 1899
B-121	W. T. Heffernan	Mar. 16, 1896	Mar. 18, 1896	Jan. 18, 1899	Feb. 1, 1899
B-124	W. T. Heffernan	May 16, 1896	May 18, 1896	Jan. 18, 1899	Feb. 1, 1899
B-127	W. T. Heffernan	Oct. 20, 1896	Oct. 23, 1896	Jan. 18, 1899	Feb. 1, 1899
C-132	W. T. Heffernan	Jan. 23, 1897	Jan. 25, 1897	Jan. 18, 1899	Feb. 1, 1899
C-133	W. T. Gonder	Mar. 27, 1897	Mar. 29, 1897	Jan. 25, 1899	Feb. 1, 1899
C-136	W. T. Heffernan	July 24, 1897	July 26, 1897	Jan. 18, 1899	Feb. 1, 1899
C-138	W. T. Gonder	Apr. 25, 1898	Apr. 28, 1898	Jan. 25, 1899	Feb. 1, 1899
C-141	W. T. Gonder	Nov. 4, 1898	Nov. 7, 1898	Jan. 25, 1899	Feb. 1, 1899
C-142	California Development Company (by Heffernan)	Dec. 15, 1898	Dec. 19, 1898		
C-143	C. N. Perry, for himself and C. D. Co.	Dec. 21, 1898	Dec. 24, 1898 Re-recorded on Jan. 5, 1898	Dec. 21, 1898	Dec. 24, 1898 Re-recorded on Jan. 5, 1899
C-146	C. N. Perry, for himself and C. D. Co.	Feb. 20, 1899	Feb. 23, 1899	Feb. 20, 1899	Feb. 23, 1899
C-149	C. N. Perry, for himself and C. D. Co.	Apr. 25, 1899	May 2, 1899	Apr. 25, 1899	May 2, 1899

All of these notices stated that: The amount of the claim was for 10,000 cubic feet per second of the flow of the Colorado River; the intended point of diversion was in the S. W. ¼ of Sec. 25, T. 15 S., R. 21 E., S.B.B. & M. (except for an apparent error in Gonder filing of Mar. 27, 1897); the purpose was for developing power and irrigation of lands in San Diego County, Calif., and in Lower California, Mexico; and the canal would run through Lower California, Mexico, and thence into that portion of San Diego County, State of Calif., lying to the east of the San Jacinto Mts. and known as the New River Country.

[1]On January 25, 1899, Gonder assigned all his rights, title and interest to water covered by his filings made "from time to time," to California Development Company.

[2]On January 18, 1899, Heffernan assigned all his rights, title and interest to water covered by his filings made "from time to time," to California Development Company.

ASSIGNMENTS TO CALIFORNIA DEVELOPMENT COMPANY

Item No.	Assignment by	Date of Appropriation Assigned	Assignment Executed	Assignment Recorded
C-143	[1]C. N. Perry	Dec. 21, 1898	Dec. 21, 1898	Dec. 24, 1898 Re-recorded on Jan. 5, 1899
C-144	W. T. Heffernan	Filings made "from time to time"	Jan. 18, 1899	Feb. 1, 1899
C-145	W. T. Gonder	Filings made "from time to time"	Jan. 25, 1899	Feb. 1, 1899
C-146	[2]C. N. Perry	Feb. 20, 1899	Feb. 20, 1899	Feb. 23, 1899
C-149	[3]C. N. Perry	Apr. 25, 1899	Apr. 25, 1899	May 2, 1899
C-310	E. I. Rockwell	May 16, 1895	Aug. 15, 1911	Aug. 19, 1911

[1]Included in Notice of Appropriation by Perry dated Dec. 21, 1898.

[2]Included in Notice of Appropriation by Perry dated Feb. 20, 1899.

[3]Included in Notice of Appropriation by Perry dated Apr. 25, 1899.

EXHIBIT A

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Imperial Irrigation District

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff,* *vs.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendant.*	CIVIL ACTION FILE NO. 67-7-K ANSWER OF IMPERIAL IRRIGATION DISTRICT

BY WAY OF ANSWER TO PLAINTIFF'S COMPLAINT, DEFENDANT, IMPERIAL IRRIGATION DISTRICT, ADMITS, DENIES AND ALLEGES AS FOLLOWS:

I

IMPERIAL IRRIGATION DISTRICT is not a Corporation, as indicated in the title of this action, but instead is an irrigation district organized and existing since 1911 by virtue of the Laws of the State of California.

II

IMPERIAL IRRIGATION DISTRICT is located in the Imperial Valley in California, which Valley is referred to in the Act of December 21, 1928 (45 Stat. 1057) commonly known as the "Boulder Canyon Project Act".

III

Answering Paragraph 4 of the Complaint, alleges that Section 4(b) of the Boulder Canyon Project Act provides in part that the Secretary of the Interior shall make provision for revenues, by contract or otherwise, adequate in his judgment to insure payment of all expenses of construction, operation and maintenance of the main canal and appurtenant structures in the manner provided in the Reclamation Law. Alleges that the Contract dated December 1, 1932, between the UNITED STATES and IMPERIAL IRRIGATION DISTRICT, annexed to Plaintiff's Complaint as "EXHIBIT A", made provision for such revenues. Denies Paragraph 4 of Plaintiff's Complaint to the extent it is inconsistent with this Paragraph of Defendant's Answer.

IV

Answering Paragraph 5 of Plaintiff's Complaint, alleges that the Secretary's authorization to prescribe general regulations with respect to contracts for the storage of water in Hoover Dam and for the delivery thereof is subject to the following express limitations: (References are to Sections of the Boulder Canyon Project Act).

(a) No charge shall be made for water or for the use, storage or delivery of water for irrigation or water for potable purposes in the Imperial Valley (Section 1).

(b) Contracts respecting water for irrigation and domestic uses shall be for permanent service . . . (Section 5).

(c) The Dam and reservoir shall be used, among other things, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact (Section 6).

(d) The UNITED STATES, its permittees, licensees and contractees, and all users and appropriators of water stored, diverted, carried and/or distributed by the reservoir, canals and other works herein authorized, shall observe and be subject to and controlled by the Colorado River Compact in the construction, management and operation of said reservoir, canals and other works, and the storage, diversion, delivery and use of water for the generation of power, irrigation and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses and contracts shall so provide (Section 8).

(e) Nothing herein shall be construed as interfering with such rights as the States now have, either to the waters within their borders, or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control and use of waters within their borders, except as modified by the Colorado River Compact or other interstate agreement (Section 18). (The rights of IMPERIAL IRRIGATION DISTRICT are present perfected rights, vested and existing at the time the Boulder Canyon Project Act was passed.)

Denies Paragraph 5 of Plaintiff's Complaint to the extent it is inconsistent with this Paragraph of Defendant's Answer.

V

Answering Paragraph 6 of Plaintiff's Complaint, Section 14 of the Boulder Canyon Project Act provides "this Act shall be deemed a supplement to the Reclamation Law, which said Reclamation Law shall govern the construction, operation and management of the works herein authorized, except as otherwise herein provided". Alleges that the Act does otherwise therein provide with respect to the land limitation provisions of the Reclamation Law. Alleges further, that the Reclamation Law governs only the construction, operation and management of the works authorized by the Boulder Canyon Project Act and not the delivery of water to this answering Defendant, or the use thereof for irrigation.

VI

Answering Paragraphs 7 and 8 of Plaintiff's Complaint, denies that IMPERIAL IRRIGATION DISTRICT is or was at any time a reclamation project or a division of a reclamation project or a new reclamation project as those

terms are used in Section 46 of the Act of May 25, 1926 (44 Stat. 649). Alleges that the sole and only purpose of Sections 40 through 50 of the Act of May 25, 1926 "is the rehabilitation of the several reclamation projects and the insuring of their future success by placing them upon a sound operative and business basis and the Secretary of the Interior is directed to administer said Sections to those ends." Said purpose is not and has never been applicable to IMPERIAL IRRIGATION DISTRICT and the privately owned lands located within said District. Alleges further that no "recordable contract" has ever been prepared or offered for execution by the Secretary of the Interior.

VII

Answering Paragraph 10 of Plaintiff's Complaint, alleges that the United States constructed Imperial Dam and the All American Canal pursuant to "EXHIBIT A", only after the authorization and validity of "EXHIBIT A" was judicially confirmed. Article 31 of "EXHIBIT A" in conformity with 42 Stat. 541, 43 U.S.C. 511, provides in part that "the United States shall not be in any manner bound under the terms and conditions of this contract unless and until a confirmatory final judgment in such proceedings shall have been rendered, including final decision or pending appellate action if ground for appeal be laid." Final decision and a confirmatory final judgment was entered by the Superior Court of the State of California, in and for the County of Imperial in Civil Action No. 15460 entitled "HEWES vs. All Parties, Etc.,". Said final judgment provides in part as follows: "That under said contract between the UNITED STATES and IMPERIAL IRRIGATION DISTRICT, dated the 1st day of December, 1932, the delivery of water will not be limited to one hundred sixty (160) acres in a single ownership and that the lands of the Defendant, CHARLES MALAN, in excess of one hundred sixty (160) acres, will not be denied water because of the size of said ownership and that water service to lands regardless of the size of ownership will not be in any manner affected by said contract so far as the size of individual ownership is concerned."

Said confirmatory judgment, including the portion quoted is binding on this answering Defendant and all parties and persons whatsoever. Alleges that said contract, "EXHIBIT A" as written, and as well said confirmatory judgment are, and each of them is, binding upon the UNITED STATES.

VIII

Answering Paragraph 11 of Plaintiff's Complaint, admits that the contract "EXHIBIT A", does not expressly set forth any land limitation provisions of Reclamation Law and alleges that said contract does not, by implication, reference or otherwise, include any of the land limitation provisions of the Reclamation Law. Alleges that the right of the Secretary of the Interior to prescribe and enforce rules and regulations under Article 24 of said contract is subject to other provisions of said contract and is further limited by those portions of the Boulder Canyon Project Act specified in Paragraph IV of this Answer. Alleges further that the Secretary's right to prescribe rules and regulations under Article 24 of "EXHIBIT A" may only be exercised after notice to Defendant and opportunity for it to be heard.

IX

Answering Paragraph 12 of Plaintiff's Complaint, alleges that the letter of Secretary RAY LYMAN WILBUR, dated February 24, 1933, was an administrative determination that the land limitation provisions of the Reclamation Law did not apply to privately owned land in Imperial Valley, California, and alleges that the same administrative construction has been consistently followed, both before and after the date of said letter.

X

Answering Paragraph 13 of Plaintiff's Complaint, alleges that Memorandum Opinion No. M-36675, dated December 30, 1964, by the Solicitor, Department of the Interior, is erroneous, incomplete and has no legal effect whatsoever.

Alleges that the public announcement of the Secretary on December 31, 1964, concerning certain instructions to Commissioner DOMINY, is not a rule or regulation nor a proper administrative interpretation or construction, has no legal effect whatsoever and exceeds the authority of the Secretary of the Interior. Alleges that there are no land limitation provisions applicable to this answering Defendant and that this action in any event, is premature.

XI

Answering Paragraph 15 of Plaintiff's Complaint, alleges that this answering Defendant is conclusively bound both by the confirmatory final judgment previously referred to in Paragraph VII of this Answer, and by the contract "EXHIBIT A" hereinabove referred to.

XII

Answering Paragraph 16 of Plaintiff's Complaint, alleges that the controversy referred to therein has been finally adjudicated by the confirmatory final judgment referred to in Paragraph VII of this Answer, and that said judgment is conclusive on the Plaintiff herein.

XIII

Answering Paragraph 17 of Plaintiff's Complaint, alleges that Plaintiff has no authority to resume control of the facilities of the All American Canal now being operated by this Defendant, nor to withhold delivery of water to this Defendant.

XIV

Alleges that the legislative history of the Boulder Canyon Project Act shows that the Congress of the United States did not impose any land limitation provisions of Reclamation Law on privately owned lands in the Imperial Valley, and further, that the Congress did not intend to impose such land limitation provisions on said lands. Alleges that Congress and the Secretary of the Interior and the Plaintiff

herein have at all times had actual and constructive knowledge of the confirmatory final judgment referred to in Paragraph VII of this Answer and that the Congress has, from time to time, by the passage of laws and appropriations, ratified and confirmed the judicial construction of "EXHIBIT A" as contained in the confirmatory final judgment, and alleges further, that Congress has adopted the judicial construction of the confirmatory final judgment to the effect that land limitation provisions of the Reclamation Law do not apply to privately owned lands within Imperial Valley.

XV

Alleges that at all times since the entry of the confirmatory final judgment, Plaintiff has had knowledge of the provisions thereof, specifically the non-applicability of the land limitation provisions of Reclamation Law to privately owned lands in Imperial Valley and, nevertheless, Plaintiff has considered itself bound under the terms and conditions of the contract, "EXHIBIT A", and has accepted and continues to accept and retain the benefits from said contract, which benefits include, among other things, the following:

1. All public lands of the United States lying within the All American Canal service area have been included within the boundaries of IMPERIAL IRRIGATION DISTRICT.

2. Since 1933, thousands of acres of public lands within the boundaries of IMPERIAL IRRIGATION DISTRICT as now existing, have been patented by the Plaintiff to various private individuals, and have thus passed into private ownership, and most, if not all of said lands, have received and continue to receive water from Defendant's distribution system.

3. The payment by this Defendant of all sums provided to be paid by it to Plaintiff in and by the provisions of Articles 10 and 12 of said contract, "EXHIBIT A".

4. The performance by this Defendant of each and all of the provisions in said contract "EXHIBIT A" on its part to be performed.

By reason of the foregoing, Plaintiff is estopped and precluded now to assert that the land limitation provisions of the Reclamation Law are applicable to privately owned lands in IMPERIAL IRRIGATION DISTRICT. Alleges that Plaintiff's Complaint is wholly without equity.

XVI

This Defendant hereby adopts, and incorporates herein as its own, each and all of the contentions made in and by the answer of landowner defendants, intervenors herein. For purposes of brevity and to avoid repetition, said contentions so adopted are not set forth at length herein other than by this express reference to said Answer for further particulars as to the nature, extent and content of said contentions so adopted and incorporated, and each of them.

. WHEREFORE, Defendant prays that the Court hold, adjudge and decree that the land limitation provisions of Reclamation Law are not applicable to privately owned lands within the boundaries of IMPERIAL IRRIGATION DISTRICT, and for such other and further relief consistent therewith as the Court may deem proper.

DATED: May 26, 1967

HORTON, KNOX, CARTER
& RUTHERFORD

By .....
R. L. Knox, Jr.
Attorneys for Defendant
Imperial Irrigation District

[Declaration of Service Omitted]

THOMAS C. LYNCH, Attorney General
BURTON J. GINDLER, Deputy Attorney General
DAVID B. STANTON, Deputy Attorney General
600 State Building
Los Angeles, California 90012
Telephone: 820-3204 (area code 213)

Attorneys for Intervening Defendant
State of California

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff,* v. IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendant.* JOHN M. BRYANT, et al., Intervening defendants, both individually and on behalf of members of a class, to wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervening defendant.*	No. 67-7-K Civil ANSWER OF DEFENDANT STATE OF CALIFORNIA

Defendant STATE OF CALIFORNIA (hereinafter "STATE"), appearing for itself and as *parens patriae,* for answer to the Complaint on file herein, alleges as follows:

I. INTERESTS OF STATE

1. At the request of the Governor of the State of California, STATE becomes a defendant herein by and through the Attorney General of California. The Governor is the

chief executive of the State (see *Cal. Const.* art. V, § 1). The Attorney General is the chief law officer of the State and head of its Department of Justice (*Cal. Const.* art. V. § 13; *Gov. Code* §§ 12510, 12512, 15000 & 15001).

2. STATE owns 7,843 acres of land, constituting the Imperial Waterfowl Management Area of its Department of Fish and Game, within defendant IMPERIAL IRRIGATION DISTRICT (hereinafter "IID"). That area is more particularly described in Exhibit A hereto. Water is delivered by IID from the All-American Canal to said department to irrigate and to pond irrigable lands of STATE in excess of 160 acres. That area could not be effectively utilized by STATE for protection of migratory waterfowl if STATE were limited to 160 acres of land.

3. STATE, *parents patriae,* has certain rights in waters of the main Colorado River, including present perfected rights. See *Arizona* v. *California,* 373 U.S. 546 (1963) [opinion], 376 U.S. 340 (1964), 383 U.S. 268 (1966) [decree]. These interstate water rights of STATE, *parens patriae,* include the rights of IID to main Colorado River waters, which are involved in the defenses to this action.

II. RESPONSES TO ALLEGATIONS OF COMPLAINT

4. Answering paragraph II of the Complaint: STATE alleges that the contract, Exhibit A to the Complaint, neither expressly nor impliedly includes or authorizes imposition of any of the land limitation provisions of the federal reclamation law to privately owned lands or to State lands within IID.

5. Answering paragraph 13 of the Complaint: STATE denies that Memorandum Opinion No. M-36675 dated December 30, 1964, by the Solicitor, Department of the Interior, correctly states the law as to the applicability of the federal land limitation provisions within IID. That law is correctly stated herein under heading III, which follows.

III. AFFIRMATIVE CONTENTIONS OF STATE

6. None of the land limitation provisions of the federal reclamation laws apply to privately owned lands or to State lands within IID.

7. Federal land limitation laws do not apply to privately owned lands within IID because of (a) the provisions of the Boulder Canyon Project Act, 45 Stat. 1057 (1928), and other relevant statutes, according protection to vested water rights, including "present perfected rights"; (b) the legislative history of the Boulder Canyon Project Act; (c) the consistent administrative and practical construction, including particularly the 1933 opinion of Secretary of the Interior Ray Lyman Wilbur (Complaint, par. 12), relying in part upon the recognition and protection of "vested water rights" and the reliance thereon by landowners in purchasing, selling, and retaining lands within IID; (d) congressional ratification of the Wilbur opinion; (e) *res adjudicata;* and (f) estoppel.

8. Even if the federal land limitation laws were held applicable to "privately owned lands" within IID, those laws would not apply to lands owned by STATE, including its Imperial Waterfowl Management Area, because these lands are not "privately owned lands" within the meaning of the federal land limitation laws. This conclusion is compelled by the language of those laws, the legislative history, and the administrative, practical, and congressional construction and is consistent with the purposes of such laws.

WHEREFORE, STATE prays that the Court hold, adjudge, and decree:

1. That IID is not bound by the land limitation provisions of reclamation law in the delivery of Colorado River water to privately owned lands or to State lands within the boundaries of IID.

2. That owners of lands within IID, including STATE and the class represented by the landowner defendants, are not bound by the land limitation provisions of reclamation law with regard to the execution of recordable contracts

or the use of Colorado River water on their lands within the boundaries of IID.

3. That if any land limitation provisions are applicable to other landowners within IID, such provisions have no application to lands owned by STATE, including its Imperial Waterfowl Management Area.

DATED: May 16, 1967

THOMAS C. LYNCH,
Attorney General of the State
of California
BURTON J. GINDLER,
DAVID B. STANTON,
Deputy Attorneys General

By .....
BURTON J. GINDLER
Deputy Attorney General

EXHIBIT A

Imperial Waterfowl Management Area
of
Department of Fish & Game, State of California
(Imperial Unit — Imperial Irrigation District)
7,843 acres

WISTER UNIT — 5243 acres
— Acquired: 1954-1958 by condemnation
— Location: Southeast corner of Salton Sea, west and northwest of Niland
— Uses by State Dep't of Fish & Game
• 3010 acres of cereal and marsh plants irrigated
• 740 acres ponded (300 acres of additional ponds for warm water hatchery, planned)
— Uses by U.S. Bureau of Sport Fisheries & Wildlife
• 160 acres of barley irrigated

HAZARD FLEET UNIT — 535.23 acres
— Acquired: 1948 by deed from certain parties (purchase)
— Location: Astride Alamo River about a mile south of Salton Sea
— Uses by State Dep't of Fish & Game
• 200 acres of barley to be irrigated
• 65 acres to be ponded
— Uses by U.S. Bureau of Sport Fisheries & Wildlife
• 80 acres of barley irrigated

FINNEY-RAMER UNIT — 2064.43 acres
— Acquired: 1931-1932 by land exchanges with certain parties
— Location: Astride Alamo River about 8-10 miles south of Salton Sea
— Uses by State Dep't of Fish & Game
• 200 acre water surface on Finney Lake (fed by drainage water)
• 235 acre water surface on Upper and Lower Ramer Lakes (fed by drainage water)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff*, vs. IMPERIAL IRRIGATION DISTRICT, a Corporation, *Defendant*. JOHN M. BRYANT, ROBERT C. BROWN, THEODORE B. SHANK, HAROLD A. BROCKMAN, CLARA MARIE GUTIERREZ, CHARLES E. NILSON, KAKOO D. SINGH, STEPHEN H. ELMORE and JOHN KUBLER, JR., Landowner Defendants, both individually and on behalf of members of a class, to wit, all persons owning more than 160 acres of irrigable land within the Imperial Valley in California. STATE OF CALIFORNIA, *Intervening Defendants*	NO. 67-7-T CIVIL JUDGMENT

This action came on for trial before the Court, Honorable HOWARD B. TURRENTINE, District Judge, presiding, and the issues having been duly tried, and a decision having been duly rendered by the Memorandum Opinion filed herein containing the Court's findings of fact and conclusions of law;

IT IS ORDERED, ADJUDGED AND DECREED:

1. The Defendant IMPERIAL IRRIGATION DISTRICT is not bound by the land limitation provisions of Reclamation Law in the delivery of Colorado River Water to any of the privately owned lands within the boundaries of IMPERIAL IRRIGATION DISTRICT.

2. The land limitation provisions of Reclamation Law have no application to privately owned lands lying within the IMPERIAL IRRIGATION DISTRICT; and accordingly the owners of such lands are in no case required, as a condition to receiving water, to execute recordable contracts pursuant to the provisions of Section 46 of the Omnibus Adjustment Act of May 26, 1926, 44 Stat. 649, 43 U.S.C. Section 422e, as amended.

3. The land limitation provisions of Reclamation Law have no application to lands owned by the State of California in its Imperial Water Fowl Management Area.

DATED: February 9, 1971

HOWARD B. TURRENTINE
Howard B. Turrentine
United States District Judge

APPROVED AS TO FORM
pursuant to Rule 7

DAVID R. WARREN
Attorneys for Plaintiff
United States of America

ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

IMPERIAL IRRIGATION DISTRICT,
a corporation,
Defendants,

JOHN M. BRYANT, et al.,

Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District.

STATE OF CALIFORNIA,
Intervenor.

Civil No. 67-7-T

BEN YELLEN, HARRY A. HEATH, FRANCES HEATH, RUFINA T. LIRA, WILLIE BRONSON, H. C. PHILLIPS, JUAN ALONSO LIRA, MANUEL VALDIVA, GENARO CUEN, APOLINAR GLORIA, L. M. MENOR, ALEJO CORTEZ, HENRY MARQUEZ, MARIA MARQUEZ, ESTELA OTERO, JUAN SENTEJAS, ALLI SLALI, JOSE DEL REL, JOSE CODNEZ, ALEX RODRIGUEZ, ALEX VILLEGAS, SR.,

NOTION OF MOTION:

1. To Intervene;
2. For Leave to Take Deposition;
3. For Stay of Implementation of Judgment Pending Ruling on Motion to Intervene

JOHN MCBAILEY, VICTOR CASTELLO, CRESCENCIO RUBIO, ROBERT MAJEYO, JOE PARRA, WILMA SELLERS, MARIE EATON, JOHN H. SMITH, ALBERT L. COUCH, FRANK EPPINGER, MARGARITA CARRELO, TROY W. SPARKS, ANDY SCHROCK, SAM L. GAFFORD, GEORGE H. GREEN, MATILDA FIERRO, MARIA HUEVAZ, EUGENE NELSON, BALDOMERO SAIZA, BENJAMIN R. LUNA, JR., JENNIE SAIZA, FELIZIA ESCALERA, ANITA LOPEZ, MRS. GLEN POWELL, GLEN POWELL, JOSEFINA PENUNURI, EUGENIO PONCE, RUTH VALDIVIA, JUANA PADILLA, ZOILA VIOLORIA, JOAQUIN PADILLA, JUANA ORTEGA, BELLE GREEN, RUTH HERNANDEZ ROMERO, MARY ARAUJO, DOLORES MARTINEZ, MIKE W. KELLEY, CARL MCLEMORE, JOSE M. ROSALES, ISABEL SOTO, CHARLES A. JENNINGS, BARNEY A. DEAN, PAT A. DEAN, CECIL LEE KELLEY, MARY GUERRERO, JOE RAGSDALE, PABLO DIAZ, JUNE CHAMBLESS, CHARLES E. PEREZ, SALOME S. PEREZ, CARL R. GRIMSLEY, JUNIOR ROBINSON, RICHARD CHEATWOOD, MRS. CRUZ LIMON, BENITO BUSTAMANTE, MANUEL ARAUJA, FERNANDO T. BARTIDO, ALBERT ARMSTRONG, LAURA JONES, MIKE MIRANDA, MARGUERITE JOHNSON, MARGARITA P. MORALES, EVA TORRES, MARY VILLEGAS, MACARIO F. PACHECO, EVELYN A. LLOYD, ANNIE L. CAMPBELL, GRACE DURAN, PACUNDO MADUENO, GUADELUPE MADUENO, MARY LEON, TERESA ARIAS, CLAUDINA COCOVA, DELFINA GUEBARA, LUISA RAMIREZ,

FAUSTINA ROSALEZ, PETRA MEDINA, CONCEPCION SETTLE, ISABEL TENIENTE, FRANK O. B. ADAMS, PALMIDA PEREZ, NELLIE RODRIGUEZ, MARY CURIEL, JOHNNIE TOWNSEND, TILLIE RODRIGUEZ, JORGE MORENO, WILLIAM GORHAM, H. K. HUTCHINSON, BERTHA J. HUTCHINSON, OBDULIA DAVILA, LUPE CASTANEDA, ADELAIDO R. PASQUEZ, JR., ERNESTINA VASQUEZ, MARTHA P. TABAREZ, FLORINE JONES, HENRY CLAY PICKLES, VIOLA GRIMSLEY, IDA K. PADDOCK, PEDRO ESCALERA, OLIVIA MARQUEZ, CECILIA SANDOVAL, YGNACIO SALAZAR,

Applicants for Intervention.

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on March 29, 1971, at the hour of 10:00 A.M., or as soon thereafter as counsel can be heard, in the courtroom of the Honorable Howard B. Turrentine, United States District Judge, U. S. Customs and Courthouse, San Diego, California, the above-named Applicants will move the Court for the following orders:

1. Permitting them to intervene as plaintiffs for the purpose of prosecuting an appeal from the Judgment of this Court entered February 9, 1971;

2. Granting leave to take the deposition of David Warner, Esq., Chief of Litigation of the Department of Justice, Lands and Natural Resources Division, Washington D.C.;

3. Staying implementation of the Judgment entered February 9, 1971, until a period of ten days following the Court's ruling on this motion.

Said motion will be made on the grounds that Applicants, and each of them, are persons within the class of beneficiaries of the Reclamation Act and that each Applicant: Claims an interest in the property and/or transaction which is the subject of this action; is so situated that the disposition of this action by this Court on February 9, 1971, may, as a practical matter, impair or impede his ability to protect that interest; and Applicants are not being adequately represented by the existing parties to this action.

Said motion will be based upon this Notice, such affidavits and other oral and documentary evidence as may be presented prior to and at the hearing of said motion, and the papers, pleadings and files herein.

DATED: March 12, 1971.

ARTHUR BRUNWASSER
Attorney for Applicants for Intervention

[Certificate of Mailing Omitted]

ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff,* *vs.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.*	Civil No. 67-7-T
JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor,*	AFFIDAVIT OF BEN YELLEN IN SUPPORT OF MOTION TO INTERVENE
BEN YELLEN, et al., *Applicants for Intervention.*	

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

BEN YELLEN, being duly sworn, deposes and says:

1. I am one of the petitioners for intervention in this action. I am also one of the plaintiffs in Civil Action No. 69-124 now pending in this court, entitled, "Ben Yellen,

et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants". The latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902, 32 Stat. 389, 43 U.S.C.A. Section 431 against absentee landowners.

2. My address is 128 South 8th Street, Brawley, California.

3. My occupation is physician.

4. For more than the past five years, I have been personally acquainted with all of the other petitioners who are now seeking to intervene in this proceeding. Most of said petitioners are agricultural workers who have been so employed within the Imperial Valley and in particular within the geographical boundaries of the Imperial Irrigation District. None of the petitioners, including myself, own farm land anywhere in the United States, and all of us wish to own land and to engage in farming on that land.

5. If the Government had prevailed in this litigation, the Applicants and persons similarly situated would attempt to purchase the excess lands under the terms and conditions set by the Secretary of the Interior.

6. I am acquainted with the cost of land within the Imperial Irrigation District. Land that is without water has a market value and sells for approximately $25.00 to $50.00 per acre. Land that is irrigated with federal reclamation water by the Imperial Irrigation District has a value and sells for between $1200.00 to $1400.00 per acre.

7. As a practical matter, the applicants are unable to purchase irrigated lands unless the Government appeals the judgment of this Court and ultimately prevails, so that the

excess lands will be sold under reasonable terms and conditions set by the Secretary of the Interior.

BEN YELLEN

Subscribed and sworn to before me
on March 14, 1971.

JEAN H. SCHMITT
Notary Public

[Notarial Seal and Certificate of Mailing
Omitted In Printing]

ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

IMPERIAL IRRIGATION DISTRICT,
a corporation,
Defendants.

JOHN M. BRYANT, et al.,
Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District,

STATE OF CALIFORNIA,
Intervenor,

BEN YELLEN, et al.,
Applicants for Intervention.

Civil No. 67-7-T

AFFIDAVIT OF CARL R. GRIMSLEY IN SUPPORT OF MOTION TO INTERVENE

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

CARL R. GRIMSLEY, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No.

69-124 now pending in this Court, entitled, "Ben Yellen, et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 655 North Imperial Av., Brawley, California.

3. My occupation is agricultural worker.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

CARL R. GRIMSLEY
Carl R. Grimsley

Subscribed and sworn to before me
on March 26th, 1971.

MARY T. MORALES
Notary Public

[Notarial Seal and Certificate of Mailing
Omitted In Printing]

ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

IMPERIAL IRRIGATION DISTRICT,
a corporation,
Defendants.

JOHN M. BRYANT, et al.,
Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District,

STATE OF CALIFORNIA,
Intervenor.

BEN YELLEN, et al.,
Applicants for Intervention.

Civil No. 67-7-T

AFFIDAVIT OF ADELAIDO R. VASQUEZ, JR. IN SUPPORT OF MOTION TO INTERVENE

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

ADELAIDO R. VASQUEZ, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No.

69-124 now pending in this Court, entitled, "Ben Yellen, et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 925 Ivy Street, Brawley, California.

3. My occupation is agricultural worker.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

ADELAIDO R. VASQUEZ
Adelaido R. Vasquez

Subscribed and sworn to before me
on March 20th 1971.

MARY T. MORALES
Notary Public

[Notarial Seal and Certificate of Mailing
Omitted In Printing]

ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff,* *vs.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.*	Civil No. 67-7-T
JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor.*	AFFIDAVIT OF JORGE MORENO IN SUPPORT OF MOTION TO INTERVENE
BEN YELLEN, et al., *Applicants for Intervention.*	

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

JORGE MORENO, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No.

69-124 now pending in this Court, entitled, "Ben Yellen, et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 1379 C Street, Brawley, California.

3. My occupation is agricultural worker.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

JORGE MORENO
Jorge Moreno

Subscribed and sworn to before me
on March 26th, 1971.

MARY T. MORALES
Notary Public

[Notarial Seal and Certificate of Mailing
Omitted In Printing]

ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff,* vs. IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.*	Civil No. 67-7-T
JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor.*	AFFIDAVIT OF ALBERT ARMSTRONG IN SUPPORT OF MOTION TO INTERVENE
BEN YELLEN, et al., *Applicants for Intervention.*	

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

ALBERT ARMSTRONG, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No.

69-124 now pending in this Court, entitled, "Ben Yellen, et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 686 South 13th Street, Brawley, California.

3. My occupation is agricultural worker.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

ALBERT ARMSTRONG
Albert Armstrong

Subscribed and sworn to before me
on March 21st 1971.

MARY T. MORALES
Notary Public

[Notarial Seal and Certificate of Mailing
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ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff,* vs. IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.*	Civil No. 67-7-T
JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor.*	AFFIDAVIT OF MACARIO F. PACHECO IN SUPPORT OF MOTION TO INTERVENE
BEN YELLEN, et al., *Applicants for Intervention.*	

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

MACARIO F. PACHECO, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No.

69-124 now pending in this Court, entitled, "Ben Yellen, et al.. Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 1120 G Street, Brawley, California.

3. My occupation is agricultural worker.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

MACARIO F. PACHECO
Macario F. Pacheco

Subscribed and sworn to before me
on March 21st 1971.

MARY T. MORALES
Notary Public

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ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff*, *vs.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.*	Civil No. 67-7-T
JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor.*	AFFIDAVIT OF YGNACIO SALAZAR IN SUPPORT OF MOTION TO INTERVENE
BEN YELLEN, et al., *Applicants for Intervention.*	

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

YGNACIO SALAZAR, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No.

69-124 now pending in this Court, entitled, "Ben Yellen, et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 956 G Street, Brawley, California.

3. My occupation is agricultural worker.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

YGNACIO SALAZAR
Ygnacio Salazar

Subscribed and sworn to before me
on March 20th, 1971.

MARY T. MORALES
Notary Public

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ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff*, *vs.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.*	Civil No. 67-7-T
JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor.*	AFFIDAVIT OF PABLO DIAZ IN SUPPORT OF MOTION TO INTERVENE
BEN YELLEN, et al., *Applicants for Intervention.*	

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

PABLO DIAZ, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No. 69-124 now pending in this Court, entitled, "Ben Yellen,

et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 427 North 13th Street, Brawley, California.

3. My occupation is agricultural worker.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

PABLO DIAZ
Pablo Diaz

Subscribed and sworn to before me
on March 15th 1971.

MARY T. MORALES
Notary Public

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ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff*, *vs.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.*	Civil No. 67-7-T
JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor.*	AFFIDAVIT OF EUGENIO PONCE IN SUPPORT OF MOTION TO INTERVENE
BEN YELLEN, et al., *Applicants for Intervention.*	

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

EUGENIO PONCE, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No. 69-124 now pending in this Court, entitled, "Ben Yellen,

et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 943 H Street, Brawley, California.

3. My occupation is agricultural worker.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

EUGENIO PONCE
Eugenio Ponce

Subscribed and sworn to before me
on March 20th, 1971.

MARY T. MORALES
Notary Public

[Notarial Seal and Certificate of Mailing
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ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff*, *vs.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.*	Civil No. 67-7-T
JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor.*	AFFIDAVIT OF ALEJO CORTEZ IN SUPPORT OF MOTION TO INTERVENE
BEN YELLEN, et al., *Applicants for Intervention.*	

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

ALEJO CORTEZ, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No. 69-124 now pending in this Court, entitled, "Ben Yellen,

et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 1132 B Street, Brawley, California.

3. My occupation is agricultural worker.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

ALEJO CORTEZ
Alejo Cortez

Subscribed and sworn to before me
on March 20th, 1971.

MARY T. MORALES
Notary

[Notarial Seal and Certificate of Mailing
Omitted In Printing]

ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants
for Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff,* *vs.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.* JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor.* BEN YELLEN, et al., *Applicants for Intervention.*	Civil No. 67-7-T AFFIDAVIT OF MIKE MIRANDA IN SUPPORT OF MOTION TO INTERVENE

STATE OF CALIFORNIA }
COUNTY OF IMPERIAL } ss.

MIKE MIRANDA, being duly sworn, deposes and says:

1. I am one of the petitioners for Intervention in this action. I am also one of the plaintiffs in Civil Action No. 69-124 now pending in this Court, entitled, "Ben Yellen,

et al., Plaintiffs, vs. Walter J. Hickel, et al., Defendants"; the latter action is to compel the Secretary of the Interior to enforce the residency requirement of Section 5 of the Reclamation Act of 1902 32 Stat. 389, 43 U.S.C.A. Section 431, against absentee landowners.

2. My address is 919 E Street, Brawley, California.

3. My occupation for many years is agricultural worker and farm labor contractor.

4. I do not own farm land anywhere in the United States. I would like to own land of my own on which to engage in farming. I desire to purchase the excess lands currently being irrigated with federal reclamation water by the Imperial Irrigation District.

MIKE MIRANDA
Mike Miranda

Subscribed and sworn to before me
on March 15, 1971.

HUGH S. RITTER
Notary Public

[Notarial Seal and Certificate of Mailing
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ARTHUR BRUNWASSER
445 Sutter Street, Suite 501
San Francisco, California 94108
Telephone: (415) 391-2203

Attorney for Applicants

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff*, *vs.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendants.*	Civil No. 67-7-T
JOHN M. BRYANT, et al., Intervenors, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District, STATE OF CALIFORNIA, *Intervenor.*	AFFIDAVIT OF FRANK J. BARRY IN SUPPORT OF MOTION TO INTERVENE
BEN YELLEN, et al., *Applicants for Intervention.*	

STATE OF OREGON
COUNTY OF LANE } ss.

Frank J. Barry, being first duly sworn, deposes and says:

That I reside at 2085 University Street, Eugene, Oregon; that I am a Professor of Law employed by the University of Oregon; that I teach Property, Environmental Law and Natural Resources Law;

That I served as Solicitor of the Department of the Interior from January 30, 1961, to April 7, 1968; that the Solicitor is the chief legal officer of the Department of the Interior; that a major part of the business of the Solicitor during the years that I held that office was the study, interpretation and application of the excess land provisions of the Reclamation Laws of the United States;

That I have read the opinion of the Honorable Howard B. Turrentine, Judge of the United States District Court for the Southern District of California in the case entitled, "*United States of America* v. *Imperial Irrigation District, et al.*" (No. 67-7-T of the files of said Court); that I have noted Judge Turrentine has held that said excess land laws do not apply to the Imperial Irrigation District; that this opinion is the opposite to the one I reached in my opinion of December 31, 1964;

That my said opinion was arrived at after careful study by the most experienced reclamation lawyers in the Department of the Interior; that it was concurred in by the Attorney General of the United States; that it was shared by the Solicitor of the Department of the Interior, Honorable Fowler Harper, in the Truman Administration (71 Int. Dec. 496, at 531-548) and by the Solicitor General in the Eisenhower Administration (71 Int. Dec. 496, at 555); that the circumstances of the issuance of the informal opinion of Secretary Wilbur "granting" the exemption, the fact that we were unable to find any evidence in the Department that Secretary Wilbur's Solicitor considered the informal opinion and the fact that none of those who recognized the exemption ever pretended to rely on more than that it was based on Secretary Wilbur's informal opinion, all raise doubts as to the correctness of the informal opinion;

That notwithstanding the conviction of the lawyers in my office, and of myself, and the lawyers in the Department of Justice, of the applicability of the excess land laws to the Imperial Irrigation District, we expressed a willingness to the representatives of the District and of the large landowners in the District to submit the entire issue for a judicial determination before taking steps to enforce what

we thought and think to be the law; that this was the subject of the negotiations referred to by Judge Turrentine on p. 4 of his Memorandum of Opinion;

That the highest legal officers of three successive administrations have cast serious doubts on the validity of the informal Wilbur opinion; that I agree with Judge Turrentine that "the decision whether acreage limitation applies under the [Boulder Canyon] Project Act involves important considerations of national policy"; that, in my opinion, and with respect to Judge Turrentine, this case must be appealed to the highest courts so that these "important considerations of national policy" can be finally resolved; that, in such an important case as this, it is no more fitting that Judge Turrentine's opinion should be the last word than should the opinion of the Solicitor of the Department of the Interior.

Dated this 20th day of March, 1971.

FRANK J. BARRY

Frank J. Barry

Subscribed and sworn to before me this 20th day of March, 1971.

BRYCE NOSHER

Notary Public in and for said County and State

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SACRAMENTO BEE Thursday, February 25, 1971

Page C2

Top Officials Oppose Enforcement Of 160-Acre Limit For Water

By Dennis Campbell

"This is not a political issue . . . At least, I hope it isn't."

The Interior Department spokesman's hope was a plaintive addendum to what had begun as a firm denial that politics could influence the federal government's decision to pursue or abandon the enforcement of the 160-acre limitation law in Imperial Valley.

But the issue has been infused with politics.

"A partisan attempt by a lame duck administration" is how Interior Department lawyers characterized the Hoover administration letter exempting Imperial Irrigation District growers from the federal law which requires that farms receiving government-subsidized water be no larger than 160 acres.

A federal judge has rejected that claim of impropriety, and now the Nixon administration must decide whether to appeal the ruling.

Consider the ingredients for politicking now:

—Major landholders in the valley include Irvine Land Co., Purex Corp. and United Fruit Co. "People like that

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Water Controversy

A law which limits the size of farms receiving federally subsidized water has flared into controversy in California. The Nixon administration is deciding whether or not to appeal a federal judge's rejection of the Interior Department's attempt to enforce that law in Imperial Valley. Some water experts claim failure to appeal will have an impact on federal water projects throughout the West. This is the fifth and last article examining the nature of the law and the Imperial Valley issue.

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are more likely to make contributions to Nixon and Reagan than to Humphrey and Unruh," asserts Dr. Ben Yellen, a long-time Imperial Valley antagonist of the growers.

—Gov. Ronald Reagan has taken a strong stand against the acreage enforcement.

—Former US Sen. George Murphy's finance chairman in the 1970 campaign was Charles Thomas, former president of the Irvine Land Co. and now a company consultant. Norton Simon, who lost to Murphy in the Republican primary, says Irvine paid Thomas' salary while he served Murphy, who left office opposing the Interior Department attempt to enforce the acreage law.

—US Sen. John Tunney, who replaced Murphy, opposed the acreage limitation when he was a congressman from Imperial Valley. "He will remain consistent with his earlier position, and he will ask the Justice Department not to appeal," his office says.

—Rep. Victor V. Veysey, Republican who succeeded Tunney, has promised he will go to the White House to block an appeal.

—In October 1949, a young man preparing to run for the US Senate appeared before Imperial Valley growers. He vowed he would fight the 160-acre limitation law. His name was Richard Nixon.

The Interior Department says it will not make the appeal decision. Only a recommendation. "The final decision is with the Justice Department, and they don't always take our advice," an official explained.

The Justice Department says it has "no comment" on the case. "We only make a recommendation. The final decision will be made in Interior," a deputy attorney general advised.

Either Justice or Interior — or perhaps the White House — must make the "final decision" soon. If there is to be an appeal, it must be filed within 60 days of last month's federal court ruling.

The sensitivity of the issue is exemplified by the many officials who, when asked to comment on the case, prefaced their remarks with "Don't quote me, but . . ."

Typical is a high and knowledgeable state water official. "They're getting away with murder in Imperial Valley, costwise," he said. "I don't see why the taxpayers should be heavily subsidizing growers who have thousands of acres."

The conservationists and pro-enforcement experts such as Paul Taylor of UC Berkeley and former Interior Solicitor Frank Barry say they have a precedent of sorts in the US Supreme Court's backing of the acreage enforcement in the Central Valley Project.

Tunney and Veysey and Federal Judge Howard Turrentine, who support the Imperial Valley exemption, stress the injustice of enforcing the 160-acre limitation and compelling the sale of family and corporate lands that have — in many instances — been held for generations.

Says one of the anonymous water consultants:

"It (the Imperial case) ought to be appealed. The Supreme Court should have a shot at it, if only to clarify government policy.

"If the court upholds acreage enforcement in Imperial Valley, and if Congress doesn't like it, then they can amend the law. Acreage enforcement has been like a crazy-quilt. Letting this thing drop where it is will be just stitching another patch onto it."

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff*, *v.* IMPERIAL IRRIGATION DISTRICT, a corporation, *Defendant.* JOHN M. BRYANT, et al., Landowner defendants, both individually and on behalf of members of a class, to-wit, all persons owning more than 160 acres of irrigable land within the Imperial Irrigation District. STATE OF CALIFORNIA, *Intervening Defendant.* BEN YELLEN, et al., *Applicants for Intervention.*	Civil No. 67-7-T ORDER DENYING APPLICANTS' MOTION TO INTERVENE

This cause came on regularly for hearing before the court on the application of Ben Yellen et al. to intervene of right pursuant to Rule 24(a)(2); the United States of America appearing by Assistant United States Attorney, Raymond Zvetina; Imperial Irrigation District appearing by R. L. Knox, Jr.; John M. Bryant, et al, appearing by O'Melveny & Myers, Pierce Works and Charles W. Bender; State of California, intervenor, appearing by Deputy Attorney General Neil Gobar; and Ben Yellen, et al by Arthur Brunwasser. Applicants for intervention have moved for an order permitting intervention; for leave of court to take the deposition of Mr. David Warner, Chief of Litigation, Lands and Natural Resources Division, Department of Justice; and for an order staying implementation of the judgment entered on February 9, 1971, until ten days after

the ruling on these pending motions. The motion to stay implementation of the judgment is hereby ordered denied because there will be no delay in the issuance of the court's ruling. The motion for leave to take the deposition of Mr. David Warner is denied because there is no showing of the necessity therefor. The United States has no duty to disclose its decision concerning appeal during the sixty-day period within which an appeal may be taken.

The court finds that the application to intervene is timely made. Intervention after judgment is permissible if there is no substantial prejudice to the other parties. This litigation is now in its fourth year, and the limited nature of the participation sought, that of appeal, does not disturb the prior proceedings.

All of the defendants assert that the judgment in the 1933 case of *Hewes* v. *All Persons* (Civil No. 15460, Superior Court, Imperial County, California) is *res judicata* as to the applicants for intervention. Proceedings in the *Hewes* case were instituted pursuant to Article 31 of the December 11, 1932 contract between the United States and the Imperial Irrigation District and § 511 of Title 43 of the United States Code. The object of the suit was to determine the validity of the 1932 contract. In this action the question of whether the 160-acre limitation had application to privately owned lands within the District was litigated, and it was held there that the acreage limitation did not apply.

It appears that this proceeding *in rem* was intended to and did bind all persons claiming any right, title or interest in property located within the Imperial Irrigation District and that accordingly the intervention is precluded as a collateral attack upon a judgment entitled to full faith and credit.

However, regardless of the effect of the *Hewes* decision, it is incumbent upon the applicants to demonstrate "an interest relating to the property or transaction which is the subject of the action." Rule 24(a)(2) Federal Rules of Civil Procedure. The interest supporting intervention has been described as a "direct, substantial, legally protectable interest in the proceedings." *Hobson* v. *Hansen,* 44 F.R.D. 18 (1968). The applicants here assert that they desire to buy excess land which may be sold if the government ultimately prevails in this lawsuit and is able to enforce acreage limitation in the Imperial Irrigation District, but this "interest" is no greater than that possessed by the general public. Several specific factors in this case illustrate how extremely speculative and remote is the interest asserted here. Before any possible sale of excess lands, the initial decision in the first phase of the lawsuit must be reversed on appeal. If this occurs, then there will be a second lengthy trial concerning the nature and extent of the landowner defendants' vested rights to Colorado River Water. If the government prevailed in that phase, a plan for disposition would have to be proposed and executed. In all probability, there would be some recognition of the added value of the land due to the efforts of the current landowners. Applicants have shown no present ability to purchase and no prior offers within the past twenty years to purchase farm land in the Imperial Valley at market value. Because this is not a class action intervention, the capability of the named applicants to purchase the lands they desire is material. Furthermore, the requirement of reclamation law for recordable contracts to be approved by the Secretary of the Interior is in no way inconsistent with the customary and usual right of a seller to choose his purchaser. Finally, if the Secretary of the Interior were able to take a more active role in the disposition of excess lands, there would quite likely be a veterans' preference for entry which would put a large class ahead of the present applicants. Cf. 43 U.S.C. §§ 186, 279.

It is also required that the interest of applicants for intervention be inadequately represented by existing parties. The court has observed the vigorous representation by counsel for United States in urging that acreage limitation applies in the Imperial Irrigation District and finds that the interest of applicants, if any, has heretofore and is now being adequately represented by plaintiff.

Accordingly, it is ordered that the motion for leave to intervene be, and the same hereby is, denied.

DATED: March 29, 1971.

HOWARD B. TURRENTINE
United States District Judge

U.S.A. vs. IMPERIAL IRRIGATION DISTRICT

1/11/67 Fld Complt for Declaratory Jgmt purs to Title 28, Sec 1345, U.S. Code, Issd summons, MADE JS-5 CARD;

1/17/67 Fld Summons returned executed

1/30/67 Fld stip & Order thereon in which to file a mtn or to ans; Deft granted ext of time to & including 4/3/67, (K)

3/16/67 Fld memo of Pts & Auths in suppt of mtn (1) to require joinder of movants as parties Deft under Rule 19, or (2)in the alternative for 1v to movants to intervene as parties Deft under Rule 24, in ea case both individually & as representative members of a class under Rule 23;

Fld ntc of mtn (1) to require joinder of movants as parties Deft under Rule 19, or, in the alternative (2) for 1v to movants to intervene as parties Deft under Rule 24, in ea case both individually & as representative members of a class under Rule 23; Noted for 3/31/67 at 2 P.M.;

LODGED ans of Landowner Deft's;

3/28/67 Fld stip for con't of hrg & for ext of time to plead, & Order thereon, (K) Hrg cont'd to 5/15/67, at 2 P.M.;

5/ 1/67 Fld Pltf's response to mtn (1) to require joinder of movants as parties Deft under Rule 19, or, in the alternative, (2) for 1v to movants to intervene as parties Deft under Rule 24, in ea case both individually and as representative members of a class under Rule 23,

5/11/67 Fld reply memo in support of mtn (1) to require joinder of movants as parties Deft under Rule 19, or (2) in the alternative for leave to movants to intervene as parties Deft under Rule 24, in each case both individually & as representative members of a class under Rule 23;

Fld affidavit of Stephen H. Elmore

LODGED — Proposed Order as presented by atty's for Intervening Defts

5/15/67 Fld Ord allowing intervention of Hohn M. Bryant, Robt C. Brown, Theodore B. Shank, Harold A. Brockman, Clara Marie Gutierrez, Chas. E. Nilson, Kakoo D. Singh, Stephen H. Elmore, and John Kubler, Jr., as Deft's & for filing of ans heretofore Lodged;

5/16/67 Fld ans of Landowner Deft's heretofore Lodged on 3/16/67;

5/17/67 Fld notice of mtn of the State of Calif., Noted for 6/5/67 at 2 PM
LODGED — Answer of Deft State of California

5/17/67 Fld affid of serv by mail; Fld receipt for service;

5/19/67 Fld ans of Imperial Irrig Dist.;

5/19/67 Fld notice of P/T hrg, Noted for Aug 7, 1967, at 2 P.M.;

6/1/67 Fld stip for con't of hrg on mtn of State of Calif, & Ord thereon, Cont'd to 6/26/67 at 2 P.M., (K)

6/16/67 Fld memo of Pts & Auths in oppo to mtn of the State of Calif (1) for leave to intervene under Rule 24 as a party Deft; or (II) to require joinder under Rule 19 of the State of Calif as a party Deft;

6/21/67 Fld reply memo of movant State of Calif in support of its motion;
I. For leave to intervene under Rule 24 as a party Deft; or
II. To require Joinder under Rule 19 of the State of Calif as a party Deft;

7/7/67 Ent mtn of State of California to Intervene or Joinder as party Deft; Motion submitted;
Fld notice of mtn to produce or to permit copying, Noted 8/7/67 at 2 P.M.; Fld mtn to produce or to permit inspection & copying;
Fld affid in suppt of mtn to produce or to permit inspection & copying;
Fld statement of reasons in suppt of mtn to produce or permit copying;

7/ 7/67 Fld memo of Pts & Auths in suppt of Deft's mtn to produce, or to permit inspection & copying of documents under F.R.CIV.P 34;

8/ 4/67 Hearing to produce or permit inspection is cont to 8/25/67 at 2 PM. Pre-trial hearing cont to Nov. 20, 1967 at 2 PM. (K)

8/ 3/67 Order granting leave of the state of Calif. to intervene. (K)

8/ 7/67 Fld petition for leave to appear Amicus Curiae in support of the Plaintiff;

8/15/67 Fld memo of Pts & Auths in oppo to Deft's mtn to produce or to permit inspection & copying of documents under Rule 34, F.R.CIV.P;
Fld affid of N. O. WOOD, JR., Director of management operations, Office of the Secretary of Interior; Fld affid of service;

8/24/67 Fld Further Notice re: Deft's mtn to Produce or to Permit Inspection & Copying of Documents Under Rule 34 Fed. R. Civ. P (K)

8/25/67 Fld stip Re Mtn to Produce & Proposed Ord thereon, (K)

9/22/67 Fld Order granting mtn of Petnr's to appear Amicus Curiae;
Fld memorandum of operations, (K)

11/ 9/67 Ent mtn of Deft's to produce or to permit copying advanced fr 2 P.M. to 10:30 A.M. for prelim hrg in chambers, Hrg advanced to 11/20/67 10:30 A.M.; Pre-Trial advanced fr 2 P.M. to 10:30 A.M.; Counsel notified;

11/20/67 Ent Mtn to Produce — Settled; P/T ord cont'd to 6/6/68, 9:30 A.M.

4/ 3/68 Fld Notice of Change of Address of Atty for Amicus Curiae;

5/24/68 Fld minute Ord con't P/T hrg to 9/13/68, at 2 P.M., (K)

5/28/68 Fld Landowners Brief No. 1, Brief No. 1 (Appendex 1) (Appendix No. 2) and Appendix No. 3;

8/ 8/68 Fld Landowners Brief No. 2, Vol I, Vol II, Vol III;

9/13/68 Fld stipulation of facts;

9/16/68 Ent Ord file prelim stip.; Final stips to be fld by 10/7/68; All briefs to be fld by 12/1/68; Trial set for 1/15/69 at 9:30 AM, (K)

10/ 2/68 Fld statement in lieu of opening brief;

10/ 7/67 Fld Pltf's P/T brief;

10/ 7/68 Fld list of witnesses who will testify on behalf of the landowner Deft's;

10/22/68 Fld stipulation re exhibits by & between ea & all parties;

10/30/68 Fld note of change of Address of Attys as to O'Melveny & Myers;

10/30/68 Fld list of witnesses who will testify on behalf of the U.S.A.;

11/ 1/68 Fld Pltf's reply brief to Landowners brief No. 1 & Landowners brief No. 2;

11/ 7/68 Fld reply brief of Landowner Deft's;

11/ 7/68 Fld Interrogs to Pltf propounded by Landowner Deft's;

11/14/68 Fld P/T brief of intervening Deft's State of California;

11/20/68 Fld stip for ext of time for Pltf to respond to Interrogs propound by Landowner Deft's, & Order thereon, (K) Time ext to & include 12/20/68;

11/22/68 Fld Notice of Taking Depositions;

11/27/68 Fld response of Landowner Deft's to Pltf's reply brief;

12/ 9/68 Fld Notice of Taking Depositions; (Deft Imperial Irrigation Dist);

12/10/68 Fld Notice of Taking Depositions by Atty's for Pltf; Landowner Deft;
Fld Revised List of Witnesses who will testify on behalf of the Landowner Deft's;

12/30/68 Fld stip for ext of time for Pltf to respond to Interrgs propounded by landowner Deft's & Ord thereon, (K) Time ext to & include 1/6/69;

1/ 6/69 Fld answers to Interrogatories of Deft;
Fld revision of list of witnesses to be called by the U.S.A.;

..../10/69 Fld depositions of John Randolph Riter and Edmund Barbour;

..../10/69 Fld Second Set of Interrogs propounded to Pltf by Landowner Deft's;

..../21/69 Fld deposition of Edward Weinberg;
Ent Ord con't trial to April 2, 1969, at 9:30 A.M.;

..../27/69 Fld stip for ext of time for Pltf to respond to the second set of interrogs propounded by Landowner-Deft's; Time ext to & include 2/28/69, (K)

..../27/69 Fld stip & Ord for con't of trial date, (K) Cont'd to 4/2/69, at 10:00 A.M.;

..../ 7/69 Fld Pltf's ans to Second Set of Interrogs propounded to Pltf by Landowner Deft's; Affid of Service by Mail;

..../23/69 Fld Minute Ord that trial be cont'd to 6/18/69, at 9:30 A.M.; (K)

..../ 3/69 Fld Depositions of Kakoo Singh, Robert C. Brown & John Kubler, Jr.;

..../ 9/69 Fld depositions of Clara Maria Gutierrez, Theodore Benjamin Shank, Harold Anderson Brockman, John M. Bryant, Charles Edward Nilson and Stephen Henry Elmore;

..../19/69 Fld notice that trial date be cont'd to 10/6/69, at 9:00 A.M.;

..../21/69 Fld deposition of Robert F. Carter;

..../15/69 Fld response of Pltf to Landowner-Deft's reply brief;

..../30/69 Fld stip & Ord for con't of trial date, (S) Ord cont'd to 2/2/70, at 9:30 A.M.;

..1/26/69 Fld Ord setting prelim P/T conf, & Ord vacating trial date, (S) Cont'd to 1/30/70, & the trial date of 2/2/70 is hereby vacated;

1/ 7/70 Fld Ord con't P/T hrg, (S) Cont'd to 7/17/70, at 2 P.M.;

..../27/70 Ent ord that the pre-trial setting presently scheduled for 7/17/70 is hereby cont until 9/25/70 at 2 P.M. Counsel notified, (T)

7/ 6/70 Fld request for admissions by Landowner Defts with exh A attached;

7/ 8/70 Fld amendment to request for admissions by Landowners Deft.

7/16/70 Fld report RE status of the litigation;

..../ 7/70 Fld Deft Landowners Interrogatories of 8/6/70 to Pltf;

..../17/70 Fld Pltf's stipulation and ord thereon for cont to 9/15/70 within which the Pltf may have to respond, (T)

9/15/70 Fld stipulation and order thereon extending time to 9/21/70 within which plaintiff may respond to Interrogatories of 8/6/70. (T)

9/22/70 Fld Pltf's mot for protective ord; T/W; memo in support of mot for protective ord; Fld Pltf's response to landowners Deft's request for admissions; Pltf's objections to interrogatories of 8/6/70; Answers to Deft's interrogatories of 8/6/70; and certificate service, with exhs 1 thru 24 attached;

9/23/70 Fld stipulation and ord that pltf may have to and including 9/21/70 within which to respond to admissions of fact submitted in July 1980. (T)

9/23/70 Fld Landowner Defts summary brief of principal P&A's raised by Deft's;

9/25/70 Fld catalog of exhibits to be offered by pltf;

..../25/70 Ent ord set for trial 12/1/70 at 10 A.M. all discovery, exchange of witnesses names and agreement of facts to be completed by 10/29/70. Tentative Date of 11/13/70 at 2 P.M. for any other matters, (T)

10/15/70 Fld stipulation on by Landowner Defts RE: trial procedure and order submitted therewith, (T)

..../27/70 Fld amended list of deft landowners' witnesses advisement as to State's witnesses; Fld notice on behalf of all defts re completion of discovery proceedings, lack of objections to facts heretofore stipulated to and withdrawal of objections to certain of plntf's exhibits;

10/28/70 Fld notice re witness for deft Imperial irrigation district, T/W affid of service;

11/ 9/70 Fld notice of stipulated facts to which pltf does not object;

11/23/70 Fld summary brief of plaintiff, T/W affid of service;

11/23/70 Fld plaintiff's objections to exhibits to be offered by defts, T/W affid of service;

11/30/70 Fld amended list of Plaintiff's witnesses, with certificate of service;

11/30/70 Lodged findings of fact and conclusions of law proposed by Landowner Defts;
Fld memo RE: Defendants' objections to Pltf's documentary evidence;

11/30/70 Fld findings of fact and conclusions of law proposed by pltf;

12/ 1/70 COURT TRIAL; Fld Exhs & witnesses, (T)

12/ 2/70 FUR COURT TRIAL: Fld list of witnesses & exhs;

12/ 3/70 FUR COURT TRIAL: Fld list witnesses & exhs;

12/ 7/70 FUR COURT TRIAL;

12/ 8/70 FUR COURT TRIAL;

12/21/70 Fld plaintiff's Brief of Amicus Curiae in support of Plaintiff T/W affid of service;

1/ 5/71 Fld memo opinion, (T)

2/ 9/71 Fld judgment — It is ordered and decreed the deft Imperial Irrigation District is not bound by the land limitation provisions of Reclamation Law in the delivery of Colorado River Water to any of the privately owned lands within the boundaries of Imperial Irrigation District. The land limitation provisions of Reclamation Law have no application to privately owned lands lying within the Imperial Irrigation District and accordingly the owners of such lands are in no case required, as a condition to receiving water, to execute recordable contracts pursuant to the provisions of Section 46 of the Omnibus Adjustment Act of May 26, 1926, 44 Stat. 649, 43 U.S.C. Section 422e, as amended. The land limitation provisions of Reclamation Law have no application to land owned by the State of California in its Imperial Water Fowl Management Area. (T) (ENTERED 2/9/71/ MADE JS-6 CALAD

3/18/71 Fld notice of change of address of attorney for amicus curiae — Arthur Brunwasser, 445 Sutter St, Suite 501, San Francisco, Ca. 94108;

Fld notice of mot to Intervene — for leave to take deposition & for stay of implementation of judgment pending ruling on mot to intervene;

Fld applicant's memorandum in support of mot to intervene — Noticed for 3/29/71 at 10 A.M. LODGED protective notice of appeal, without payment of filing fees or bond;

3/25/71 Fld memorandum of landowner defendants in opposition to motion of applicants for intervention;

Lodged Affidavit of Charles W. Bender in support of opposition and order waiver of local rule 3(e)(2)a;

3/26/71 Fld affidavit of Charles W. Bender in support of application for order waiving requirement of local rule 3(e)(2)a with order thereon granting same, (T)

3/26/71 Fld Deft's response of Imperial Irrigation District to motion to Intervene;

3/29/71 Fld affidavit of Frank J. Barry in support of motion to intervene;

Fld affidavit of Ben Yellen in support of motion to intervene;

Fld affidavit of Carl R. Grimsley in support of mot to intervene;

Fld affidavit of Adelaido R. Vasquez, Jr. in suppt of mot to intervene;

Fld affidavit of Jorge Moreno in support of mot to intervene;

3/29/71 Fld affidavit of Albert Armstrong in support of mot to intervene;

Fld affidavit of Macario F. Pacheco in support of mot to intervene;

Fld affidavit of Ygnacio Salazar in support of mot to intervene;

Fld affidavit of Pablo Diaz in support of mot to intervene;

Fld affidavit of Eugenio Ponce in support of mot to intervene;

Fld affidavit of Alejo Cortez in support of mot to intervene;

Fld affidavit of Mike Miranda in support of mot to intervene;

3/29/71 Fld order denying applicants motion to intervene, (T) Mld copies to counsel

3/29/71 Ent ord mot to intervene — Denied; Motion to take deposition — Denied; Motion for stay of Implementation of Judgment — Denied; Court to prepare order, (T)

..../ 5/71 Fld notice of appeal by applicants for intervention re order made and entered 3/29/71 denying applicants' mot to intervene together with filing fee of $5.00;

..../ 7/71 Fld $250.00 Pacific Employers Insurance Company appeal bond;

..../12/71 Fld designation of transcript on appeal;

..../20/71 Fld amendment to notice of appeal;

5/20/71 Fld Designation of Record on Appeal;

..../14/71 Fld orig & 3 cpys reporter's transcript;

10/19/71 Mld clerk's record w/tran to CA.